UNITED
NATIONS

A S

General Assembly Security Council

Distr.
GENERAL

A/47/527
S/24660
13 October 1992
ENGLISH
ORIGINAL: ENGLISH/FRENCH

GENERAL ASSEMBLY
Forty-seventh session
Agenda items 45 and 97
QUESTION ON CYPRUS
HUMAN RIGHTS QUESTIONS

SECURITY COUNCIL
Forty-seventh year

Letter dated 9 September 1992 from the Permanent Representative of Cyprus to the United Nations addressed to the Secretary-General

With his letter of 8 July 1992, the Permanent Representative of Turkey to the United Nations requested the circulation as an official document of the United Nations (A/47/329-S/24289, dated 15 July 1992) his Government's positions in connection with the report of the European Commission of Human Rights, adopted by the Committee of Ministers of the Council of Europe on 2 April 1992. The said report was issued on the basis of Application No. 8007/77 of Cyprus against Turkey.

Due to the fact that with his said letter the Permanent Representative of Turkey attempts to create the impression that the positions of his Government were excluded on purpose from the extracts of the report that we had requested to be circulated as an official document (A/47/204-S/23887 and Corr.1, dated 7 May 1992), we are now obliged, in order to set the record straight, to request that the full text of the report of the European Commission of Human Rights (see annex) be circulated as an official document of the United Nations. 1/ It should be noted that, whereas the documents circulated by the Permanent Representative of Turkey constitute the unsubstantiated positions of his Government, the report portrays the work, findings and decisions of the European Commission of Human Rights on the Application of Cyprus against Turkey, which was adopted by resolution DH(92)12 by the Committee of Ministers of the Council of Europe.

I shall be grateful if the text of the present letter and its annex is circulated as a document of the General Assembly, under agenda items 45 and 97, and of the Security Council.

(Signed) Andreas J. JACOVIDES
Ambassador
Permanent Representative
of Cyprus to the United Nations

Notes

1/ Circulated in the languages of submission only.

/...

ANNEX

COUNCIL
OF EUROPE

CONSEIL
DE L'EUROPE

EUROPEAN COMMISSION OF HUMAN RIGHTS

Application No. 8007/77

CYPRUS
against
TURKEY

Report of the Commission

(Adopted on 4 October 1983)

RESOLUTION DH(92)12
HUMAN RIGHTS
APPLICATION No. 8007/77
CYPRUS AGAINST TURKEY
(adopted by the Committee of Ministers on 2 April 1992
at the 473rd meeting of the Ministers' Deputies)

The Committee of Ministers,

Having regard to the report drawn up by the European Commission of Human Rights in accordance with Article 31 of the European Convention on Human Rights relating to the application lodged by Cyprus against Turkey (No. 8007/77),

Decides to make public the above-mentioned report of the Commission;

Views this decision as completing its consideration of the present case.

/...

TABLE OF CONTENTS

Page

INTRODUCTION 7

A. Background 7

B. Substance of the application 8

C. Proceedings before the Commission 9

  1. Admissibility 9

  2. Merits 10

    a) 1978 - 1979 10

    b) Interim Report and Decision of the Committee of Ministers 13

    c) 1980 - 1983 14

D. The present Report 16

PART I - GENERAL 17

Chapter 1 - Application of Arts. 28 and 31 of the Convention in the circumstances of the present case . . 17

Chapter 2 - Legal interest 19

Chepter 3 - Responsibility of Turkey 22

Chapter 4 - Art. 15 of the Convention 23

PART II - MISSING PERSONS 24

Chapter 1 - Submissions of the Parties 24

  a) Applicant Government 24

  b) Respondent Government 27

Chapter 2 - Investigation by the Commission 28

  a) Preliminary observations 28

  b) Proceedings in the present case 29

Page

Chapter 3 - Evaluation of the evidence obtained 32

a) Cases investigated by the Delegation . . 32

aa) File N° 23 (Nicos Alexandrou) 32
bb) File N° 1209 (Panayiotis Christoforou) 33
cc) File N° 127 (Andreas Germanos). . . . 34
dd) File N° 153 (Costakis Georghiou). . . 35
ee) File N° 328 (Minas Ioannou) 36

b) Further cases submitted to the Commission 37

Chapter 4 - Opinion of the Commission 38

PART III - REMAINING COMPLAINTS 40

Chapter 1 - Displacement of persons and separation of families 40

a) Submissions 40

aa) Applicant Government 40
bb) Respondent Government 41

b) Opinion of the Commission 42

Chapter 2 - Deprivation of possessions 44

a) Submissions 44

aa) Applicant Government 44
bb) Respondent Government 46

b) Opinion of the Commission 48

Chapter 3 - No remedy 50

a) Submissions 50

b) Opinion of the Commission 50

Chapter 4 - Discrimination 51

a) Submissions 51

b) Opinion of the Commission 51

Chapter 5 - Oppression of Turkish Cypriots 52

PART IV - CONCLUSIONS 53

/...

Page

Separate opinion of Mr M.A. TRIANTAFYLLIDES 55

Professor Dr Bülent DAVER's dissenting opinion 57

Separate opinion of Mr G. TENEKIDES 60

Separate opinion of Mr H.G. SCHERMERS 68

Appendix I - HISTORY OF PROCEEDINGS 69

Appendix II - DECISION ON ADMISSIBILITY 85

INTRODUCTION

A. Background

1. This Report deals with the third application (N° 8007/77) by Cyprus against Turkey.

2. The basic events which gave rise to the present situation in Cyprus, to which this Report relates, are set out at Part I, Chapter 1, of the Commission's Report of 10 July 1976 concerning the two previous applications (N°s 6780/74 and 6950/75) by Cyprus against Turkey.

3. The Commission recalls that, in their first application (N° 6780/74), the applicant Government stated that Turkey had on 20 July 1974 invaded Cyprus, until 30 July occupied a sizeable area in the north of the island and on 14 August 1974 extended its occupation to about 40% of the territory of the Republic. The applicant Government alleged violations of Arts 1, 2, 3, 4, 5, 6, 8, 13 and 17 of the Convention and Art 1 of Protocol N° 1 and of Art 14 of the Convention in conjunction with the aforementioned Articles. In their second application (N° 6950/75) the applicant Government contended that, by acts unconnected with any military operation, Turkey had, since the introduction of the first application, committed, and continued to commit, further violations of the above Articles in the occupied territory.

4. In its Report of 10 July 1976 concerning Applications N°s 6780/74 and 6950/75 the Commission concluded in particular (at pages 165 to 167) that Turkey had violated Arts 2, 3, 5, 8, 13 and 14 of the Convention and Art 1 of Protocol N° 1.

5. The Committee of Ministers of the Council of Europe, on 20 January 1979, adopted Resolution DH (79) 1 concerning the above-mentioned two previous applications.

6. The following is an outline of the third application, as submitted by the Republic of Cyprus to the European Commission of Human Rights under Art 24 of the European Convention on Human Rights, and of the procedure before the Commission concerning this application. In the course of the procedure the Commission has transmitted an Interim Report to the Committee of Ministers on 3 September 1980.

B. The substance of the present application

7. The applicant Government contend that, since 18 May 1976 when the Commission terminated its investigation in the first two applications (N°s 6780/74 and 6950/75) by Cyprus against Turkey, Turkey continues to commit breaches of Arts 1, 2, 3, 4, 5, 6, 8, 13 and 17 of the Convention and of Arts 1 and 2 of Protocol N° 1 and Art 14 of the Convention in conjunction with the aforementioned Articles.

8. The applicant Government state that Turkey "continues to occupy 40% of the territory of the Republic of Cyprus seized in consequence of the invasion of Cyprus by Turkish troops on 20 July 1974".

9. The violations complained of in the application are described as:

- detention or murder of about 2,000 missing Greek Cypriots;
- displacement of persons from their homes and land (refusal to allow the return of over 170,000 refugees and eviction of Greek Cypriots from the occupied areas through inhuman methods);
- separation of families;
- looting and robbery of movables belonging to Greek Cypriots;
- seizure, appropriation, exploitation, occupation, distribution and destruction of movable and immovable properties of Greek Cypriots.

10. Details of these complaints are reproduced in the Commission's decision on the admissibility of the application, which is annexed to this Report.

11. The applicant Government also complain of the "oppression of Turkish Cypriots in the occupied areas" (1).

---

(1) For details see the "Particulars of the Application" (reproduced below at pp 85 - 97).

C. Proceedings before the Commission

12. The Agents of the Parties in the proceedings before the Commission were:

- Mr Loukis G. Loucaides, Deputy Attorney-General, for the applicant Government, and

- Professor Dr Ilhan Unat for the respondent Government.

1) Admissibility

13. The application was introduced on 6 September 1977. Particulars of the application were filed on 4 November 1977.

14. The respondent Government, in their observations of 11 January 1978 on the admissibility of the application, requested the Commission to declare the application inadmissible on the following grounds (1):

- that the applicants were not entitled to represent the State of Cyprus and accordingly had no standing before the Commission as applicants under Art 24 of the Convention;

- that Turkey had no jurisdiction over the territory of the Turkish Federated State of Cyprus - the area where the alleged acts were claimed to have been committed;

- that domestic remedies had not been exhausted, as required by Art 26 of the Convention, and that the time-limit of six months, laid down in Art 26, for bringing a case before the Commission had not been observed;

- that the application was substantially the same as the two previous applications (N°s 6780/74 and 6950/75 - cf para 2 above); and

- that the application was abusive.

15. At the oral hearing before the Commission on 5 and 6 July 1978, the respondent Government also maintained that the Commission was precluded from dealing with the present application by the decision of the Committee of Ministers of 21 October 1977 concerning the two previous applications (2).

16. The applicant Government contested all these grounds (3).

17. In its decision of 10 July 1978 on the admissibility of the application (annexed to this Report), the Commission found (4) :

---

(1) For details see below pp 97 - 112.
(2) Cf below pp 137 - 144.
(3) See below pp 112 - 137 and 144 - 146.
(4) See below pp 147 - 159.

- that the application had been validly introduced on behalf of the Republic of Cyprus;

- that Turkey's jurisdiction in the north of the Republic of Cyprus, existing by reason of the presence of her armed forces there, which prevents exercise of jurisdiction by the applicant Government, could not be excluded on the ground that jurisdiction in that area was allegedly exercised by the "Turkish Federated State of Cyprus";

- that the application could not be rejected for non-exhaustion of domestic remedies or for non-observance of the six months rule;

- that the application could not be declared inadmissible as being the same as the previous Applications N°s 6780/74 and 6950/75;

- that the Commission was not precluded from dealing with the present application by the Committee of Ministers' decision of 21 October 1977 concerning the two previous applications; and

- that the Commission could not accept the objection that the application was abusive.

2) Merits (1)

(a) 1978 - 1979

18. The applicant Government's observations on the merits of the application were filed under cover of the Government's letter of 17 January 1979.

19. The respondent Government, in their letter of 9 May 1979, stated (2):

---

(1) A fuller account of the Parties' procedural submissions in 1979 and 1980 is given in the "Interim Report of the Commission on the Present State of the Proceedings" of 12 July 1980.

(2) Original French. English translation by the Council of Europe.

/...

> "There has been no change in the Turkish Government's view that the application in question was not lodged by a competent authority of the Republic of Cyprus. The Turkish Government therefore continue to consider that the Greek-Cypriot Administration does not have the quality of an applicant and that at all events its purported capacity to represent the State of Cyprus is not binding on Turkey.
>
> For these reasons my Government much regret that they are unable to take part in the proceedings on the merits of the application in question.
>
> ...."

In the same communication the respondent Government submitted that the Committee of Ministers of the Council of Europe, in Resolution DH (79) 1 concerning Applications N°s 6780/74 and 6950/75, had "agreed that this Resolution should be considered as a decision putting an end to the examination of the case of Cyprus v Turkey."

20. The applicant Government, in a communication of 2 August 1979, stated the expectation "that the Commission will adopt the normal procedure for the examination of the merits of the above application as in the case of Applications N°s 6780/74 and 6950/75."

21. The Commission decided on 5 October 1979 that the Committee of Ministers' Resolution DH (79) 1 concerning Applications N°s 6870/74 and 6950/75 does not in any way prevent it from continuing its examination of the present application. It further recalled that, by its decision of 10 July 1978, the present application was declared admissible; that such a decision is conclusive for the Parties; and that, in the Convention, the High Contracting Parties have accepted obligations under Art 28 (a) in relation to proceedings before the Commission.

The Commission called on the Parties accordingly to assist it in the performance of its task under the Convention and to submit such suggestions as they wished to make concerning its further examination of this case. In this connection, the Parties should indicate "whether they accept that their memoranda, submitted to the Committee of Ministers in the previous applications, may be considered, in so far as they are relevant, as forming part of the present case and, further, whether they consider that any of the particulars of the present application requires a Commission visit to Cyprus."

22. The applicant Government, in their communication of 21 November 1979, referred to the suggestions made in paras 88 - 90 of their observations on the merits, requesting the Commission, in an investigation, to hear witnesses, inspect localities in Cyprus and Turkey, and to take other relevant evidence.

The applicant Government added that, during the investigation, they "may ask the Commission to take into consideration in relation to some matters in issue (eg the responsibility of the respondent Government for certain continuing violations) the 'Memorial' presented by the respondent Government before the Committee of Ministers in respect of Applications N°s 6780/74 and 6950/75." However, in a further communication of 28 December 1979 the applicant Government argued that the above document "submitted to the Committee of Ministers in the previous applications cannot, under the terms of the Convention, become the subject of consideration by the Commission in the present proceedings".

The Commission, noting that the said Memorial, submitted to the Committee of Ministers, had not been communicated to it, did not, in the absence of any indication by the respondent Government that they wished to rely on this document in the present proceedings, find it appropriate to take it into consideration.

23.. The respondent Government, in a letter of 24 December 1979 (1), reiterated their view "that Application N° 8007/77 was not lodged with the Commission by a competent authority of the Republic of Cyprus; that, in other words, the Greek Cypriot Administration does not have the quality of an applicant and that its purported capacity alone to represent the State of Cyprus is at all events not effective as against Turkey, given that no jurisdiction can be competent to oblige the Turkish Government to recognise against their will the legitimacy of a 'Government' which has usurped the State powers in violation of the Constitution of which Turkey is a guarantor. For these reasons (the) Government much regret that they are unable to take part in the proceedings on the merits before the Commission."

24. The applicant Government, in a communication of 12 February 1980, submitted "that the stand taken by the respondent Government does not offer any ground for not proceeding with the examination of the merits of the case."

The applicant Government's "Supplementary material regarding facts set out in the Particulars and the Observations on the merits of the application" arrived on 5 May 1980.

---

(1) Original French. English translation by the Council of Europe.

(b) Interim Report and Decision of the Committee of Ministers

25. On 13 May 1980 the Commission decided to inform the Parties that it considered sending an interim report to the Committee of Ministers containing an account of the state of proceedings, an expression of the opinion of the Commission that Turkey has failed to respect its obligations under Art 28, and a request that the Committee of Ministers urge Turkey to meet those obligations.

The Parties were invited to submit their observations on this course of action.

26. The applicant Government submitted observations in their communication of 25 June 1980.

27. The respondent Government, in a letter of 25 June 1980, stated that their "views on the Application N° 8007/77 are already set out in (the) letter of 24 December 1979."

28. The "Interim Report of the Commission on the Present State of the Proceedings" was adopted on 12 July 1980 by seventeen votes against one.

In the Report the Commission expressed the opinion "that, by its refusal to participate in the Commission's examination of the merits of the present application, Turkey has so far failed to respect its obligations under Art 28 of the Convention" (1).

The Commission requested the Committee of Ministers "to urge Turkey, as a High Contracting Party to the European Convention on Human Rights, to meet its obligations under this Convention and accordingly to participate in the Commission's examination of the merits of the present application, as required by Art 28" (2).

The Interim Report was transmitted to the Committee of Ministers on 3 September 1980.

29. By letter of 4 December 1980 the Chairman of the Committee of Ministers informed the President of the Commission of the Decision adopted by the Committee during the 326th meeting of the Ministers' Deputies (24 November to 4 December 1980). In that decision the Committee, having taken cognizance of the Commission's Interim Report, "Recalls the obligations imposed on all the Contracting Parties by Article 28 of the European Convention for the Protection of Human Rights and Fundamental Freedoms."

---

(1) Para 45 of the Interim Report.

(2) Para 48 of the Interim Report.

/...

(c) 1980 - 1983

30. On 12 December 1980 the Commission, basing itself on the above decision of the Committee of Ministers, decided that the respondent Government should again be invited to submit their observations on the merits of the application. A new time-limit, expiring on 2 March 1981, was fixed for that purpose.

31. The respondent Government replied on 27 February 1981 that, for the reasons given in previous letters, they continued "to find it impossible to participate in the proceedure as to the merits before the Commission". (1)

32. The Commission, pursuing its examination of the case notwithstanding the respondent Government's refusal to participate, decided on 16 March 1981 to bring its above correspondence with the respondent Government to the attention of the Committee of Ministers and to inform the Committee that it would continue its proceedings.

The Commission further decided that the applicant Government should be invited to submit:

- certain particulars of their complaint concerning missing persons (2), and

- observations on the question in what way the Government have a valid legal interest in a determination of their remaining complaints in the present application in view of the fact that these complaints relate substantially to a situation in Cyprus which has already been the subject of the Commission's Report in two previous applications.

33. The applicant Government's particulars and observations arrived on 28 July 1981. Further particulars and observations were filed under cover of the Government's letters of 22 January and 8 February, and on 5 March 1982, respectively.

34. On 8 March 1982 the Commission decided that an investigation should be undertaken, into the complaint concerning missing persons, by obtaining oral evidence in some of the cases submitted by the applicant Government.

It also decided that the respondent Government should be invited to submit such observations as they might wish to make in reply to the applicant Government's above submissions.

---

(1) Original French. English translation by the Council of Europe.

(2) A more detailed account of the proceedings relating to this complaint is given below (paras 87 - 95).

35. The respondent Government replied on 22 April 1982 (1) that they continued "to find it impossible to participate in the procedure as to the merits before the Commission." They did not therefore propose "to submit any observations in reply to those of the applicant."

36. The applicant Government's further submissions of 17 September, concerning measures taken in respect of possessions of Greek Cypriots in the North of Cyprus, arrived on 20 September 1982.

37. On the same day four delegated members of the Commission heard 13 witnesses in five cases of missing persons. The hearing was held in Strasbourg, in the absence of the parties.

38. On 6 October 1982 the Commission decided that the Parties should be invited:

- to submit comprehensive memoranda setting out their final conclusions, and

- to state their oral conclusions at a hearing before the Commission.

39. The respondent Government, in a letter of 28 January 1983, stated that they still found it impossible to participate in the procedure as to the merits before the Commission; it was excluded that they would file observations or be represented at the hearing;

40. The applicant Government's final written submissions arrived on 14 February 1983.

41. At the hearing on 7 March 1983 the applicant Government stated their oral conclusions on the merits of the application. The respondent Government were not represented.

42. Following its decision on the admissibility the Commission, acting in accordance with Art 28 (b) of the Convention, placed itself at the Parties' disposal with a view to securing a friendly settlement of the matter. In view, however, of the respondent Government's refusal to participate in the proceedings under Art 28 the Commission finds no basis on which it could usefully pursue its efforts to reach such a settlement.

---

(1) Original French. English translation by the Council of Europe.

D. The present Report

43. The present Report has been drawn up by the Commission in pursuance of Art 31 of the Convention and after deliberations and votes in plenary session, the following members being present:

MM. C.A. Nørgaard, President
G. Sperduti
J.A. Frowein
F. Ermacora
J.E.S. Fawcett
M.A. Triantafyllides
E. Busuttil
L. Kellberg
B. Daver
G. Jörundsson
G. Tenekides
S. Trechsel
B. Kiernan
J. Sampaio
A. Weitzel
J.C. Soyer
H.G. Schermers

44. The text of the Report was adopted by the Commission on 4 October 1983 and is now transmitted to the Committee of Ministers in accordance with Art 31 (2) of the Convention.

45. A friendly settlement of the case not having been reached, the purpose of the present Report, pursuant to Art 31 of the Convention, is accordingly:

(1) to establish the facts; and

(2) to state an opinion as to whether the facts found disclose a breach by the respondent Government of its obligations under the Convention.

46. A schedule setting out the history of proceedings before the Commission is attached hereto as Appendix I and the Commission's decision on the admissibility of the application forms Appendix II.

47. The full text of the pleadings of the parties, together with the documents lodged as exhibits, are held in the archives of the Commission and are available to the Committee of Ministers, if required.

/...

PART I - GENERAL

Chapter 1 - Application of Arts 28 and 31 of the Convention in the circumstances of the present case

48. The Commission, noting the respondent Government's refusal to participate in the proceedings provided for by Art 28 of the Convention (1), confirms the following observations made at paras 38 to 44 of its Interim Report (cf para 28 above).

> "38. The respondent Government, after having taken part, together with the applicant Government, in the Commission's proceedings on the admissibility of the application, refuse to participate in the present proceedings on the merits, particularly on the ground already advanced at the stage of admissibility that the application was not lodged with the Commission by a competent authority of the Republic of Cyprus.
>
> 39. The Commission recalls that, as stated in the Preamble, the High Contracting Parties have in the Convention taken 'the first steps for the collective enforcement' of the rights defined in Section I of the Convention and that, under Art 19, they have set up the Commission and the Court for this purpose. A system of collective protection of human rights, as established by the Convention, requires, in order to be effective, the co-operation with the Commission of all High Contracting States concerned in a case. This is reflected in Art 28 para (a) of the Convention, which expressly obliges the parties to an admitted application to 'furnish all necessary facilities' for the Commission's investigation.
>
> 40. The Commission cannot accept the respondent Government's statement, that they do not recognise the applicant Government as the Government of Cyprus, as a ground which could absolve Turkey from its obligation to co-operate with the Commission in the present proceedings. The Commission has already stated in its decision on the admissibility that the Convention establishes a system of collective enforcement and that an application brought under Art 24 does not of itself envisage any direct rights or obligations between the High Contracting Parties concerned.

---

(1) See above paras 19, 23, 27, 31, 35, 39 and 41 in fine.

> 41. The respondent Government maintain that Turkey cannot be obliged to recognise the applicant Government as representing the Republic of Cyprus. They have also submitted that Art 28 of the Convention, which governs the procedure on the merits of an admitted application, requires direct contacts between the parties concerned.
>
> 42. The Commission observes, firstly, that its decision admitting the present application is conclusive on the Parties and, secondly, that the question of the recognition of the applicant Government by the respondent Government does not arise at the proceedings on the merits. Commission proceedings under Art 28 do not necessitate direct contacts between the parties concerned.
>
> 43. The Commission considers further that to accept that a Government may void 'collective enforcement' of the Convention under Art 24, by asserting that they do not recognise the Government of the applicant State, would defeat the purpose of the Convention.
>
> 44. The Commission finally notes that the respondent Government, while not recognising the applicant Government as Government of Cyprus, nevertheless participated as a Party concerned, under Art 32, and submitted a memorandum, in the Committee of Ministers' examination of the merits of the two previous applications (N°s 6780/74 and 6950/75) by Cyprus against Turkey. Those proceedings were, like the present one, governed by the Convention."

49. The Commission also confirms its opinion, stated at para 45 of the Interim Report "that, by its refusal to participate in the Commission's examination of the merits of the present application, Turkey has so far failed to respect its obligations under Art 28 of the Convention" and it recalls that it requested the Committee of Ministers "to urge Turkey, as a High Contracting Party to the European Convention on Human Rights, to meet its obligations under this Convention and accordingly to participate in the Commission's examination of the merits of the present application, as required by Art 28" (para 48 of the Interim Report).

50. The Commission notes the Decision adopted by the Committee of Ministers during the 326th meeting of the Ministers' Deputies (24 November to 4 December 1980) in which the Committee, having taken cognizance of the Commission's Interim Report, "Recalls the obligations imposed on all the Contracting Parties by Article 28 of the European Convention for the Protection of Human Rights and Fundamental Freedoms." (cf para 29 above).

51. The respondent Government nevertheless did not comply with the Commission's subsequent invitations to file observations and to appear at a hearing (1).

52. The Commission has already stated in the two previous applications by Cyprus against Turkey that a respondent party's failure to co-operate in proceedings under Art 28 does not prevent it from completing, as far as possible, its examination of the application and from making a Report to the Committee of Ministers under Art 31 of the Convention (2). In those applictions the Commission, in the absence of any submissions by the respondent Government on the merits of the complaints, accordingly "proceeded with its establishment of the facts on the basis of the material before it" (3).

53. In the present case the Commission, adopting the same procedure, has again based its Report on the material before it, including the submissions made by the Parties on the admissibility of the application. In this connection it has also considered Annex I to the respondent Government's observations on the admissibility, a document entitled "Observations by Mr R.R. Denktash, President of the Turkish Federated State of Cyprus". The Commission's notice of this document does not imply any view on the position of Mr Denktash, other than that his observations, as reproduced therein, are considered as forming part of those of the respondent Government (4).

Chapter 2 - Legal interest

54. The respondent Government, in their observations on the admissibility, objected that the present application "deals with the same alleged acts and events as those already covered in Applications N°s 6780/74 and 6950/75", which alleged "the detention or death of about 2,000 missing persons, the displacement of persons, the separation of families and various infringements of Greek Cypriots' property rights". According to the Government the same alleged acts and events were covered by the Commission's Report in the previous applications (5).

---

(1) Cf above paras 30, 31, 34, 35, 38, 39 and 41 in fine.

(2) Report of 10 July 1976, para 55.

(3) Ibidem para 79.

(4) Cf also para 63 below.

(5) Cf below p 109.

55. The Commission did not accept this objection as a ground for inadmissibility: in its decision admitting the present application, it found that it was not "authorised under the Convention to declare inadmissible an application filed under Art 24 by a High Contracting Party on the ground that it is substantially the same as a previous inter-State application. For so doing would, in the Commission's view, imply an examination, though preliminary, of the merits of the application - an examination which, as already stated, must in inter-State cases be entirely reserved for the post-admissibility stage. In any event, the present application is not identical with the previous cases" (1).

56. It follows from the above terms of its decision on the admissibility that the Commission, having reached the stage of the merits, was still confronted with the question whether and to what extent the present application is substantially the same as the two previous applications. In the Commission's view it cannot be its task again to investigate complaints already examined in a previous case. Art 27 (1)(b) of the Convention, while by its terms limited to applications under Art 25 and therefore not authorising the Commission to examine at the admissibility stage whether an inter-State application is substantially the same as a previous one, reflects a basic legal principle of procedure which in inter-State cases arises during the examination of the merits. A State cannot, except in specific circumstances such as set out hereafter in paras 58 and 62, claim an interest to have new findings made where the Commission has already adopted a Report under Art 31 of the Convention concerning the same matter.

57. In its consideration of this issue in the present case the Commission has distinguished between the complaint concerning missing persons and the remaining complaints.

58. The Commission noted that the issue of missing persons in the present case is substantially the same as in the previous applications, in that it concerns the fate of some 2,000 persons, both military personnel and civilians, who according to the applicant Government "were brought under the actual authority and responsibility of the Turkish army in the course of the .... military action (of 1974) or during the military occupation of the north of Cyprus (and) are still missing" (2). The Commission

---

(1) See below p 157.

(2) Particulars of the application, reproduced in the decision on the admissibility, below p 87.

recalled, however, that the evidence before it in the previous case did not allow "a definitive finding with regard to the fate of Greek Cypriots declared to be missing" (1) and, in view of new relevant information indicated in the present application (2), it decided to reconsider this issue (3).

59. In respect of the remaining complaints the Commission invited the applicant Government to indicate in what way they have a valid legal interest in a determination in the present proceedings in view of the fact that these complaints relate substantially to a situation in Cyprus which has already been the subject of the Commission's Report in the two previous applications (4).

60. The applicant Government stated that the public order of Europe had been disturbed by the flagrant violations of the Convention found by the Commission, in its Report on the two previous applications, to have been committed by Turkey. The Committee of Ministers had not in that case performed its duty under Art 32 of the Convention and Turkey continued her policy of systematic violation of the Convention. Cyprus' legal interest could therefore not be disputed in the present application (5).

61. The respondent Government, in their letter of 22 April 1982, referred to their observations on the admissibility of the application which in their view established the lack of any legal interest.

62. The Commission, considering the specific nature of the complaints and noting the terms of Resolution DH (79) 1 of the Committee of Ministers, found that the applicant Government, in the particular circumstances described by them, had a legal interest in the determination of their remaining complaints. It has accordingly considered these complaints at Part III of this Report.

---

(1) Report of 10 July 1976, para 347.

(2) See below para 72.

(3) See below para 82.

(4) Decision of 16 March 1981.

(5) Verbatim record of the hearing of 7 March 1983, pp 1 - 2.

Chapter 3 - Responsibility of Turkey under the Convention

63. In its decision on the admissibility of the present application, the Commission, confirming its finding in the previous case, stated that the Turkish armed forces in Cyprus brought any persons or property there "within the jurisdiction" of Turkey, in the sense of Art 1 of the Convention, to the extent that they exercised control over such persons or property. The Commission further observed that Cyprus had since 1974 been prevented from exercising its jurisdiction in the northern part of its territory by the presence there of armed forces of Turkey; that the recognition by Turkey of the Turkish Cypriot administration in that area as "Turkish Federated State of Cyprus" did not, according to the respondent Government's own submissions, affect the continuing existence of the Republic of Cyprus as a single State; and that, consequently, the "Turkish Federated State of Cyprus" could not be regarded as an entity which exercised "jurisdiction", within the meaning of Art 1 of the Convention, over any part of Cyprus. The Commission concluded that Turkey's jurisdiction in the north of the Republic of Cyprus, existing by reason of the presence of her armed forces there which prevented exercise of jurisdiction by the applicant Government, could not be excluded on the ground that jurisdiction in that area was allegedly exercised by the "Turkish Federated State of Cyprus".

64. The Commission does not find it necessary to add anything to its above observations as regards the imputability to Turkey of any particular violation of the Convention by her own armed forces which may be established in Parts II and III of this Report. As to violations of the Convention by acts of the Turkish Cypriot administration the Commission considers that, as submitted by the applicant Government (1), the existence of some kind of civil administration in northern Cyprus does not exclude Turkish responsibility given the degree of control which Turkey has in northern Cyprus. In particular, the Commission is satisfied that fundamental changes of the conditions in northern Cyprus cannot be decided without the express or tacit approval of the Turkish authorities.

65. As in the previous case (2), the Commission finally observes in this connection that the substance of the present application required it to confine its investigation essentially to acts and incidents for which Turkey, as a High Contracting Party, might be held responsible. Alleged violations of the Convention by Cyprus could be taken into account as such only if Turkey or another High Contracting Party had raised them in an application to the Commission under Art 24 of the Convention.

---

(1) Verbatim record of the hearing of 7 March 1983, p 32.

(2) Report of 10 July 1976, para 85.

Chapter 4 - Art 15 of the Convention

66. The Commission has in the previous case (1) considered whether there was a basis for applying Art 15 of the Convention:

- with regard to the northern area of Cyprus, and/or
- with regard to provinces of Turkey where Greek Cypriots were detained.

67. The Commission then:

- concluded that it could not, in the absence of some formal and public act of derogation by Turkey, apply Art 15 of the Convention to measures taken by Turkey with regard to persons or property in the north of Cyprus (2);
- considered that certain communications made by Turkey under Art 15 (3) with regard to certain provinces including the Adana region, in which martial law was declared, could not, within the conditions prescribed in Art 15, be extended to cover the treatment of persons brought into Turkey from the northern area of Cyprus. The Commission concluded that it could not apply Art 15 to the treatment by Turkey of Greek Cypriot prisoners brought to and detained in Turkey (3).

68. The Commission confirms these conclusions in the present case.

---

(1) Report of 10 July 1976, para 524.

(2) Ibidem para 528.

(3) Ibidem paras 529 - 531.

PART II MISSING PERSONS

Chapter 1.- Submissions of the Parties

(a) Applicant Government

69. In their "Particulars of the Application" the applicant Government submitted that about "2,000 Greek Cypriots (a considerable number of them being civilians) who were last seen alive in the occupied areas of Cyprus after the invasion and who were brought under the actual authority and responsibility of the Turkish army in the course of the aforesaid military action or during the military occupation of the north of Cyprus are still missing. Turkey continues to prevent through its forces the carrying out of investigations in the said areas and in Turkey by the international humanitarian organisations such as the International Committee of the Red Cross concerning the fate of these persons. This continuing negative attitude of Turkey on a purely humanitarian problem coupled with indisputable evidence that many missing persons were arrested, after the fighting was over, by the Turkish army or armed Turks acting under the directions of the Turkish army, and detained in prisons in Turkey or in Cyprus, is only compatible with the responsibility of Turkey for violations of Arts 2 or 4 and in any case Art 5 of the Convention in respect of all the missing persons in question."

70. For further particulars the applicant Government referred to a document entitled "the Case of the Missing Cypriots" (Appendix B) which was published by the "Pancyprian Committee of Parents and Relatives of Undeclared POWs and Missing Persons" in 1977. They added that "Turkey in various international fora, eg Third Committee of UN General Assembly (meeting of 24 November 1976), continued to decline proposals of the Cyprus Government for investigations by an independent body for the tracing of the missing persons in question." The applicant Government referred in this connection to various reports of the UN Secretary General. They observed that the establishment of the joint committee proposed to be formed with the help of the UN Special Representative in Cyprus "is delayed because of the lack of co-operation on the part of the Turkish side". Turkey's responsibility on this subject was of a continuing nature.

71. In their observations on the merits of the application, the applicant Government stated that Turkey voted against the Resolution adopted by the Third Committee of the UN Assembly on 12 December, and endorsed by the General Assembly in its Resolution No 32/128 of 20 December 1978, which urged the "establishment of an Investigatory Body under the chairmanship of a Representative of the Secretary General with the co-operation of the International Committee of the Red Cross,

which will be in a position to function impartially, effectively and speedily so as to resolve the problem (of the missing persons) without undue delay; the Representative of the Secretary General shall be empowered, in case of disagreement, to reach a binding independent opinion which shall be implemented." Turkey objected on the ground that the Resolution established a compulsory arbitration against the explicit dissent of one of the parties and contrary to international practice. She maintained her negative attitude in respect of the implementation of the above Resolution of the Third Committee and the General Assembly (the applicant Government here referred to para 42 of the Report of the UN Secretary General of 1 December 1978 - S/12946).

72. The applicant Government further stated that they had received information from various sources, such as Turkish Cypriots, Turks from Turkey and other foreigners "that a number of missing Greek Cypriots exceeding 200 have been seen alive in detention in Turkey. This information relates to the period covered by the present application and the persons in question were seen kept in detention in small groups in various areas of Turkey at different times". Thus it was alleged that, e.g., 19 detainees had been seen at Sinop in May 1977.

73. Under cover of their letter of 24 July 1981 the applicant Government submitted certain further particulars concerning the issue of missing persons, observing that they had more material, and - as Appendix B - "supplementary material" concerning persons who, according to the Government, had been seen alive in detention in Turkey after 18 May 1976 (the date on which the Commission had closed its investigation in the previous applications).

74. Under cover of their letter of 22 January 1982 the applicant Government submitted:

- a "List of Missing Persons as a Result of the Turkish Invasion in Cyprus" containing the names and other particulars of 1,619 persons;

- 50 statements of "illustrative cases of missing persons containing new facts/evidence".

Complaints

75. In support of their allegation that Turkey continues to violate Art 5 of the Convention the applicant Government submitted in their observations on the merits of the application:

"(a) The Commission has already found in repect of the question of the missing persons that 'there is a presumption of Turkish responsibility for the fate of persons shown to have been in Turkish custody'. (It) refrained at the time from making any finding regarding the question of imputability to Turkey of any particular violation of the Convention. (See para 351 of the Report of the Commisison in Applications Nos 6780/74 and 6950/75.) The applicant Government invites now the Commission to draw conclusions as to the particular violations imputable to the respondent Government bearing in mind the findings of the Commission as to the Turkish custody of those missing and the additional relevant information presented by the present application.

(b) It is submitted that Turkey should in any case be found responsible for continuing detention of the missing persons in question in view of the uncontradicted evidence that these persons have been in Turkish custody at some stage after the invasion. In the absence of proof to the effect that these persons were killed or died in the meantime the respondent Government should be found, at least, responsible for their detention contrary to Art 5 of the Convention. In this respect it is respectfully submitted that so long as there is evidence of the fact that the missing persons have been in Turkish custody it would be unreasonable to absolve Turkey from responsiblity under the Convention simply because she declines to provide any information as to their fate.

(c) It is further submitted that the evidence in question raises a presumption of detention of the missing persons by the respondent Government which, if unrebutted, is legally sufficient to establish responsibility on the part of the respondent Government for 'continuing violations' of Art 5 in respect of all these persons within the meaning of the Commission's case-law (De Becker case, Yearbook 2, pp 214, 244; First Greek Case, 2nd Decision on admissibility, Collection of Decisions 26, pp 80, 110, Yearbook 11, pp 730, 778)."

76. At the hearing before the Commission on 7 March 1983 (1) the applicant Government stated:

"In the final analysis our case now is a case of continuing deprivation of liberty under Art 5 of the Convention."

77. In their observations on the merits of the application the applicant Government also invoked Art 2 of the Convention, arguing "that there will be a question of responsibility of Turkey for violations of (this Article) if during the investigation of the case it appears that any missing persons were in fact killed. The violations in question are imputable to Turkey on the ground that they were the direct result of the military activities of the Turkish forces in the occupied area".

---

(1) Verbatim record p 90.

78. At the hearing before the Commission on 7 March 1983 (1) the applicant Government stated: "In the observations on the merits we gave, alternatively, two Articles, Art 5 and Art 2. That was because the case was pending and the investigations on this subject had not been completed. There was always the eventuality that during the investigations we might find out that some of the missing persons were actually killed by the respondent Government. But at the latest stage ... it was clear that, in the absence of any evidence or any allegation on the part of the respondent Government to the effect that any of these missing persons had in fact been killed, the only remaining violation was the one of continuing detention".

(b) Respondent Government

79. The respondent Government, in their observations on the admissibility, stated that "the allegation concerning missing persons has several times been the subject of negotiations between officials of the Turkish Federated State of Cyprus and those of the Greek Cypriot Administration - President Rauf R. Denktash and the late Archbishop Makarios also discussed this matter together on two occasions - in the presence, moreover, of Dr Kurt Waldheim, the Secretary General of the United Nations, or his Special Representative. Furthermore, the Secretary General of the United Nations mentions this in his report of 25 February 1977 in the following terms:

> "The missing persons issue was discussed during a meeting which I held in Nicosia on 12 February 1977 with His Beatitude Archibishop Makarios and His Excellency Mr Denktash. Agreement was reached to set up a new investigatory machinery covering missing persons of both communities. The special representative of the Secretary General is currently discussing the relevant details with both communities.'"

80. At Annex I to their observations on the admissibility (cf para 33 above) the respondent Government stated in particular that, on several occasions during the inter-communal negotiations, the discussions were interrupted for unannounced visits to places where, according to Mr Clerides (the Greek Cypriot Interlocuter at the inter-communal talks at the time), Greek Cypriot prisoners were to be found, but during those visits no such prisoners were found; that, according to a press communiqué of the International Committee of

---

(1) Verbatim record p 89.

the Red Cross (ICRC) of 27 February 1976, "the Greek Cypriot prisoners and Greeks detained in Turkey were repatriated under the supervision of the ICRC delegates and released in the zone controlled by the Greek Cypriots"; and that a representative of the ICRC confirmed on 5 March 1976 that all prisoners-of-war transferred to Turkey had been returned to the Greek Cypriots during the exchanges of prisoners.

81. The respondent Government did not participate in the proceedings on the merits.

However, in their letter of 22 April 1982 they submitted that "(I)t is appropriate to mention that in accordance with the Committee of Ministers' Resolution DH (79) 1 the question of missing persons is dealt with in the intercommuncal talks which provide an adequate framework for resolving the dispute. A tripartite missing persons' committee has been set up to this end by an agreement reached between the respresentatives of the two Cypriot communities on 22 April 1981 as the sole and exclusive forum in which to examine the question of everyone who has disappeared in Cyprus. This committee is currently working independently, with the participation of the Committee of the International Red Cross."

Chapter 2. - Investigation by the Commission

(a) Preliminary observations

82. The Commission recalls that the issue of missing persons was briefly referred to in Part II, Chapter 2, of its Report on Applications Nos 6780/74 and 6950/75 under the heading "Deprivation of liberty" and dealt with in more detail in Part III, Chapter 3, under the heading "Deprivation of life".

83. In the chapter "Deprivation of liberty" the Commission, examining the issue under Art 5 of the Convention, stated (at para 306) that it had "not been able to find out whether undeclared Greek Cypriot prisoners are still in Turkish custody, as alleged by the applicant Government".

84. In its examination of the issue of missing persons under Art 2 of the Convention, in the chapter "Deprivation of life", the Commission found (at para 347) that the evidence then before it did not allow "a definite finding with regard to the fate of Greek Cypriots declared to be missing. This is partly due to the fact that the Commission's Delegation was refused access to the northern part of Cyprus and to places in Turkey where Greek Cypriot prisoners were or had been detained." It appeared, however, from the evidence:

- that it was widely accepted that "a considerable number of Cypriots" were still "missing as a result of armed conflict in Cyprus"; i.e. between Turkey and Cyprus; and

- that a number of persons declared to be missing had been identified as Greek Cypriots taken prisoner by the Turkish army (para 349 of the Report).

The Commission then considered (at para 351) that there was "a presumption of Turkish responsibility for the fate of persons shown to have been in Turkish custody". However, on the basis of the material before it, the Commission was "unable to ascertain whether, and under what circumstances, Greek Cypriot prisoners declared to be missing have been deprived of their life".

85. The Commission notes that the Committee of Ministers' Resolution DH (79) 1 of 20 January 1979 concerning the two previous applications contains no specific finding with regard to the issue of missing persons.

86. The Commission further recalls its statements (at paras 54 to 58 above) concerning the respondent Government's submission that the applicant Government's complaint relating to missing persons in the present case merely repeats a complaint already covered by the Commission's Report in the first case.

(b) Proceedings in the present case

87. On 16 March 1981 the Commission, noting the applicant Government's statement (1) that they had received new information concerning missing persons, decided that the Government should be invited to submit:

- particulars, including evidence, concerning missing persons who had been seen alive in detention in Turkey after 18 May 1976; and

- any other relevant particulars, including evidence, concerning the issue of missing persons and constituting either new facts which had arisen after 18 May 1976 or evidence or indications concerning earlier facts which had become available after that date.

---

(1) Reproduced at para 72 above.

88. The applicant Government, when submitting some material under cover of their letter of 24 July 1981 (1), stated that "the necessity of protecting the missing persons which may still be alive as well as the informants and in order to maintain our confidential sources of valuable information (on humanitarian and security matters) in the occupied area prevent the disclosure of other material at this stage. Due to the same considerations no mention is made of the names and other particulars of the informants of the matters set out in Appendix A." If it were considered necessary by the Commission the applicant Government could "explain in more detail and support with evidence the actual dangers and difficulties encountered at present in relation to the disclosure of additional information on the subject of missing persons" at a meeting of representatives of the Government with the Commission. The Government "will then discuss with the Commission ways and means for the solution of the problem to the extent that is necessary to facilitate the effective investigation of the merits of the application". In any case "the applicant Government will provide the Commission with all the confidential information and evidence in their hands on the subject of missing persons if and when the Commission starts an effective investigation in detention places in the occupied area of Cyprus and in Turkey and according to the needs and progress of such investigation and any relevant directions of the Commission."

89. On 7 October 1981 the Commission decided:

- that the applicant Government should be invited to submit full particulars on the issue of missing persons; and
- that a meeting should be held in Strasbourg at which the President and a further member of the Commission should be informed by representatives of the applicant Government of the nature and contents of the further particulars and evidence which the Government would wish to submit, and at which such practical arrangements as might appear necessary in the light of their observations could be considered.

90. At the meeting between the President and Mr Frowein and representatives of the applicant Government (MM Loucaides, Papademas, Ioakim and Varoshiotis) on 14 December 1981 the President stated that the Commission could only base its findings on such submissions of a Party which had been duly communicated to the other Party and in respect of which the other Party had had an opportunity to make submissions in reply; and that any evidence submitted to the Commission should be of such a nature as to assist it in its task,

---

(1) Cf para 73 above.

/.

under Art 28 (a) of the Convention, of ascertaining the facts of the case. At the same time the President noted the Government's wish to avoid, in the interests of those concerned, the identification of certain persons.

In these circumstances the applicant Government were invited to file material concerning about fifty illustrative cases of missing persons and containing facts which had arisen after the adoption of the Commission's Report in the two previous applicatons. They were also invited to file a complete list containing the names and other details of all Greek Cypriots still declared to be missing.

91. On 8 March 1982 the Commission decided that an investigation should be undertaken, into the complaint concerning missing persons, by obtaining oral evidence in some of the cases submitted by the applicant Government under cover of their letter of 22 January 1982 (1). This investigation should be carried out by a Delegation who should, in consultation with the applicant Government, select the cases to be examined.

92. By a telex communication of 17 March 1982 the applicant Government were informed that the Delegation intended to hear witnesses in relation to the cases of such persons who had allegedly been seen:

- in the course of their transportation to Turkey (as described in the resports in files Nos 302 and 1209); or
- in detention at the prisons of Adana or Amasia (files Nos 23, 101, 153, 295, 1127 and 567); or
- when returning from Turkey (files Nos 127, 175, 328 and 966).

The Government were invited to suggest five cases considered to be representative and two further cases which they would wish to suggest in the alternative.

93. The applicant Government replied on 30 March 1982 suggesting cases Nos 23, 127, 153, 328 and 1209 and, in the alternative, cases Nos 175 and 295.

94. On 13 May 1982 the Delegation decided to hear witnesses in the five cases suggested by the applicant Government. On 8 July it decided that 12 of the 26 witnesses proposed by the Government in these cases should be examined. The Principal Delegate (Mr Frowein) decided on 18 August that a further witness suggested by the Government on 9 August should also be heard.

---

(1) Cf para 74 above.

95. The Delegation (MM Frowein, Ermacora, Melchior and Carrillo) heard the witnesses in the absence of the Parties in Strasbourg on 20 September 1982. The hearing was conducted and recorded in English, with interpretation from and into Greek; eleven witnesses gave evidence in Greek, two (in case No 127) in English (1). Some of the witnesses are referred to by keys in the verbatim record for security reasons (2). The record was communicated to the Parties.

Chapter 3. - Evaluation of the evidence obtained

(a) Cases investigated by the Delegation

96. As stated above (paras 86-90) the Commission, through delegated members, obtained oral evidence concerning five cases of missing persons. The verbatim record of the hearing of witnesses and the report of the Delegation were before the Commission.

On the basis of the above the Commission has reached the following conclusions.

(aa) File No 23 (Nicos ALEXANDROU)

97. The applicant Government state that this missing person, born in 1944, married and father of three children, was a barber at Ormidhia. On 14 August 1974, serving as a reservist with the 226 Infantry Batallion, he was with other soldiers on a lorry (Reg No GG 931) which was fired on by Turkish tanks near Tymbou. He was later seen in Turkey, at the prison of Adana, working as a barber.

98. The Delegation heard two witnesses. (3)

The first witness, G.E. Hapeshis, stated that he was together with this missing person on the lorry when they were attacked by Turkish tanks on 14 August 1974. They got off the lorry and into a ditch. The missing person later left the witness who has not seen him since.

---

(1) See pp 45 and 54 of the verbatim record.

(2) Cf paras 88 - 90 above

(3) See pages 3 - 6 and 6(a) - 12 of the verbatim record.

The second witness, W 23/5, stated that he met this missing person, working as a barber, at Adana prison. The evidence given by this witness was not in all respects quite consistent. He first declared that he had been taken together with this missing person to the room where he had his hair cut and later denied having made such a statement. He further spoke of seven people who had escaped and then disputed having said this. He also mentioned a window with bars in the barber's room and later said that he did not look out of the window because it was in another corner. The Commission finally observes that the witness, according to his own statement, did not mention his encounter with the barber to any of his Cypriot co-detainess. The explanation given for this silence is not at all convincing.

99. The Commission therefore does not find it established that this missing person was detained at Adana prison.

(bb) File N° 1209 (Panayiotis CHRISTOFOROU)

100. The applicant Government state that this missing person, born in 1949, married and father of three children, was a builder at Kiti. On 14 August 1974, serving as a reservist with the 226 Infantry Batallion, he was with other soldiers on a lorry (Reg No GG 931) which was fired on by Turkish tanks near Tymbou. He was later seen on three occasions: at Pavlides Garage, Nicosia; when taken as a prisoner of war to Turkey on a landing ship (L 402); and at Adana prison in Turkey.

101. The Delegation heard three witnesses (1)

The first witness, S. Charalambous, stated that he was together with this missing person on a lorry when they were attacked by Turkish tanks on 14 August 1974 (2). They got off the lorry and into a ditch. The missing person was wounded in his left arm. He stayed behind when the witness, who has not seen him since, left the place to fetch help.

The second witness, W 1209/6, stated that he met this missing person in September 1974 in Turkish detention at Pavlides Garage in Nicosia and on board of a ship taking prisoners to Turkey. The third witness, P. Lahanides, stated that he met this missing person at Pavlides Garage, on the boat to Turkey and at Adana prison.

---

(1) See pages 12 - 36 of the verbatim record.

(2) The same lorry as in case N° 23.

/...

102. The Commission notes that the witnesses differ in their description of the missing person's facial hair. This can in the Commission's view be explained by the fact that this missing person did not shave for some time after 14 August 1974.

The Commission finds it established, by the concordant evidence of the witnesses W 1209/6 and P. Lahanides, that this missing person was after 14 August 1974 in Turkish detention at Pavlides Garage in Nicosia and at Adana prison in Turkey.

(cc) File N° 127: Andreas GERMANOS

103. The applicant Government state that this missing person, born in 1958 and single, was a mason in Kyrenia. On 2 August 1974 he was arrested by a group of Turkish soldiers, accompanied by a Turkish Cypriot civilian of Pano Kyrenia and a Turkish Cypriot "army officer" of Kyrenia. He was subsequently seen in detention at the police station of Kyrenia and later on the main Kyrenia-Nicosia road on a bus transporting Greek Cypriot prisoners who had come back from Turkey and were to be released in Nicosia.

104. The Delegation heard three witnesses (1).

The first witness, Georghios Germanos, stated that his son, the missing person, was arrested by a Turkish officer in 1974. The second witness, W 127/3, and the third witness, W 127/4, stated that they met this missing person in Turkish detention at the police station of Kyrenia.

The first witness also stated that he saw his son in a bus transporting Greek Cypriot prisoners who had come back from Turkey and were to be released in Nicosia.

105. The Commission finds it established, by the evidence of the above witnesses, that, in 1974, this missing person was arrested by a Turkish officer and subsequently detained under Turkish control at the police station of Kyrenia.

The Commission also accepts that the first witness is convinced to have seen his son on the bus, but it does not find it established that what he believed to see was the reality. The witness's

---

(1) Verbatim record pp 37 - 58.

/..

description of the position from which he caught sight of three people - his two sons and his son-in-law - sitting on the far side of the crowded bus leaves room for reasonable doubt as to whether the witness really saw what he must very much have hoped to see.

(dd) File N° 153: Costakis GEORGHIOU

106. The applicant Government state that this missing person, born in 1951 and engaged, was living at Lakatamia and an engineer at a Pallouriotissa factory. On 14 August 1974 he was serving in the 361 Infantry Battalion which was attacked by Turkish forces in the area of Pachyammos near Kyrenia. He was later seen at Adana prison in Turkey and identified on a photo of Greek Cypriot prisoners of war, published in the Turkish magazine "HAYIAT" on 19 September 1974 (1).

107. The Delegation heard three witnesses (2).

The first witness, Anna K. Vasiliou, stated that she recognised her brother, the missing person, on a photo of Greek Cypriot prisoners published in a Turkish magazine. The second witness, C. Manousakis, stated that this missing person was in his unit on 14 August 1974. The third witness, W 153/4, stated that he met this missing person, whom he knew well, at Adana prison in 1974.

108. The Commission finds it established, by the evidence of witness W 153/4, that this witness met this missing person at Adana prison in 1974. It finds, as stated by this witness, that it is difficult to identify the person shown, at the left of the circle marked "3", on the lower photo of Greek Cypriot prisoners reproduced at Appendix I to the verbatim record; it therefore does not find it established that that the person shown on the photo is indeed this missing person.

---

(1) Appendix 1 (below) of the verbatim record of the hearing of witnesses. The photo had already been reproduced at Appendix IV of the file on "Undeclared Greek Cypriot Prisoners of War and Missing Persons", prepared by the "Pancyprian Committee of Parents and Relatives of Undeclared Prisoners and Missing Persons" and filed by the applicant Government in the proceedings concerning the two previous applications. The Government have submitted a further copy of the photo in the present proceedings.

(2) Verbatim record pp 59 - 73.

(ee) File N° 328: Minas IOANNOU

109. The applicant Government state that this missing person, born in 1943, married and father of two children, was living with his family at Kokkinotrimithia and working as a builder in Nicosia. He served as a reservist in the 306 Infantry Battalion and was engaged in combat in July 1974. He was later seen at the prison of Adana and mentioned as detained at the prison of Amasia in Turkey; he was also seen on board a ship returning from Cyprus to Turkey and subsequently at Pavlides Garage in Nicosia.

110. The Delegation heard two witnesses (1)

The first witness, W 328/2, stated that he met this missing person at Adana prison and when returning to Cyprus. The second witness, W 328/3, stated that, when at Amasia prison, he heard from other Greek detainees that this missing person was also there.

110. The Commission notes that the statements of witness W 328/2 were inconsistent on several points. Firstly, as regards his alleged encounters with this missing person, he first declared that, having met the missing person at Adana prison and having lost contact when he himself was brought to Amasia prison, he met the missing person again "when we were put in the lorries to go back to Cyprus." He then spoke (as earlier before the police) of a meeting on the boat and finally stated that it was only at Pavlides Garage that he met the missing person again. Secondly, the witness's affirmation that the prisoners were blindfolded on the boat when returning from Turkey to Cyprus is contradicted by the other witnesses who gave evidence on this subject. He himself stated that there "were possibly two or three thousand detainees" and "various boats". This, he explained, he could see because "we could just about pull down our blindfolds and peep out". Thirdly, the witness's evidence was inconsistent as regards the time when he learned that the missing person had not been released (cf pp 76, 89 and 92 of the verbatim record).

The Commission therefore does not find it established, on the basis of the above evidence, that this missing person was in fact in Turkish detention.

---

(1) Verbatim record pp 74 - 93.

(b) Other cases submitted to the Commission

112. As stated above (para 74) the applicant Government have in 1982 submitted a list of persons declared to be missing which contains the names and other particulars (identity card number, year of birth) of altogether 1.619 persons ; the list indicates in each case whether the person concerned is military, reservist or civilian, when and where he or she disappeared and where he or she has last been seen. The applicant Government have also submitted statements and evidence concerning altogether fifty of those 1.619 cases chosen as illustrative.

113. The Commission has examined five of these cases, which were selected as representative (as described at paras 92 and 93 above) and in which relevant evidence was offered by the Government, and has found in three of these cases that the missing persons concerned were in Turkish custody in 1974.

114. The Commission notes that the remaining 1.614 missing persons are either military personnel (including reservists) or civilians. They are said to have disappeared during the last ten days of July, in August, September or October 1974 or - in one case (N° 1410) - on 5 February 1975. The dates given often coincide with periods of armed conflict (20 to 30 July and 14 to 16 August 1974). In a number of these cases, evidence is offered that the missing person concerned was subsequently seen in detention (1). The Commission observes that, at para 354 of its Report in the previous case, it found "that killings happened on a larger scale than in Elia", during and immediately after the periods of armed conflict in 1974. It therefore cannot exclude that persons declared to have been missing have in fact met their death during these periods although it has no evidence before it concerning specific missing persons.

115. In conclusion the Commission, recalling its finding concerning the five cases which it examined that three missing persons were in Turkish custody in 1974, noting the evidence offered that further missing persons were then seen in Turkish custody, in the absence of any information to the contrary from the respondent Government finds sufficient indications, on the basis of its investigation of five cases and of the further material submitted, that, of the remaining 1.614 missing persons, an indefinite number have been in Turkish custody in 1974 after the cessation of hostilities.

---

(1) In about 20 of the 50 cases referred to above at para 74 in fine. Cf also indications in other cases, e.g. Nos. 8, 9, 10, 12, 55, 57.

Chapter 4. - Opinion of the Commission

116. The Commission observes that it has in the present case re-examined the issue of missing persons on the basis of fresh evidence offered by the applicant Government; the verbatim recdrd of the Delegates' hearing of witnesses was communicated to the respondent Government who were, like the applicant Government, given the opportunity of submitting observations on this new evidence (cf paras 38, 39, 95 above). The Commission considers that the factual information now before it concerning the issue of missing persons is more detailed and direct than in the previous applications and thus offers a better basis for the examination of this question.

117. In its evaluation of this evidence the Commission has found it established in three of five cases investigated, and has found sufficient indications in an indefinite number of cases (para 115 above), that Greek Cypriots, who are still missing, were in Turkish custody in 1974. It considers that this creates a presumption of Turkish responsibility for the fate of these persons and notes with concern that no relevant information has been provided by the Turkish authorities.

118. The Commission notes that the families of these missing persons have been without news from them for nearly nine years and that this is due to the respondent Government's failure to account for the fate of these persons in their custody. It finds that the resulting uncertainty has caused severe suffering to these families who are entitled under the Convention to be informed of the situation of their close relatives (1).

119. The wording of Art 5, in particular para (1), second sentence, para (3) first sentence, and para (4), shows in the Commission's view that any deprivation of liberty must be subject to control and that any unaccounted disappearance of a detained person must be considered as a particularly serious violation of this Article, which can also be understood as a guarantee against such disappearances.

---

(1) The Commission here refers to Resolution DH (82) 1, adopted by the Committee of Ministers in Applications Nos 8022/77, 8025/77 and 8027/77 - McVeigh and others v. the United Kingdom - on 27 March 1982, in which it was held (at the penultimate paragraph) that there had been a breach of Art 8 of the Convention "insofar as the applicants McVeigh and Evans were prevented from contacting their wives during detention".

/...

120. The evidence before the Commission is limited in time to the situation of missing Greek Cypriots in the second half of 1974, i.e. nine years ago (1). The applicant Government submit (para 72) that a considerable number were seen alive in detention in Turkey more recently, but no evidence has been adduced in support of this allegation.

121. The Commission cannot exclude that missing persons found to have been in Turkish detention in 1974 have died in the meanwhile but, on the material before it, it cannot make any finding as to the circumstances in which such deaths may have occurred.

122. The Commission finds no justification, in the circumstances of the present case, for detaining any of these missing persons. It observes that its statement concerning prisoners of war, at para 313 of its Report in the previous case, related only to initial detention during or immediately following the hostilities, which were terminated on 16 August 1974.

Conclusion

123. The Commission, having found it established in three cases, and having found sufficient indications in an indefinite number of cases, that Greek Cypriots who are still missing were unlawfully deprived of their liberty, in Turkish custody in 1974, noting that Turkey has failed to account for the fate of these persons, concludes by 16 votes against one that Turkey has violated Art 5 of the Convention.

---

(1) With the exception of case N° 1410, referred to at para 109 above.

PART III - REMAINING COMPLAINTS

Chapter 1 - Displacement of Persons and Separation of Families

(a) Submissions

(aa) Applicant Government

124. The applicant Government allege(1) that Turkey:

- prevents about 200,000 Greek Cypriots from returning to their homes in the North; and

- forces the remaining Greek Cypriots in the North to leave their homes and to take refuge in the south: between 18 May 1976 and 10 February 1983 "about 7,000 Greek Cypriots were forced to sign applications to leave the occupied area". The Government speak of "inhuman methods used to force the remaining Greek Cypriot inhabitants of the occupied area to leave that area (e.g. restrictions on movement, education and work threats, violence etc.)" and state that, according to the U.N. Secretary-General's Report of 1 December 1982 (S/15502, para 26), the Greek Cypriot population in the occupied area amounted, at that time, to 952 persons; on 10 February 1983 it amounted to 940.

The applicant Government submit that the above facts constitute "continuous violations of Art 8 of the Convention. Furthermore, the methods used to force the remaining Greek Cypriot inhabitants of the occupied area of Cyprus amount to violations of" Arts 3 to 5, 8, 11 and 14 of the Convention and Arts 1 and 2 of Protocol N°1.

125. The applicant Government further allege (2) that systematic colonisation of the occupied area of Cyprus has been effected by the settlement of Turks from mainland Turkey who acquire the status of "Turkish Cypriot citizens". These settlers seized and occupied the houses and lands of the Greek Cypriots, exploited their fields and stole their agricultural produce, and harassed, by various inhuman methods and activities, the remaining Greek Cypriot population in the North, thus forcing them to leave and move to the Government controlled area. The colonisation was carried out in furtherance of the Turkish policy of altering the racial balance of the island and

---

(1) Final submissions of 10 February 1983, para 47.

(2) Final submissions paras 57-60.

changing the demographic pattern of Cyprus by converting the occupied area into an exclusively Turkish populated area on a permanent basis. Since the Turkish invasion about 63,000 Turks from the mainland have settled in the occupied area.

The applicant Government submit that this colonisation constitutes continuing violations of Arts 3, 5, 8, 13, 14 and of Art 1 of Protocol N° 1 to the Convention.

126. The applicant Government, quoting reports of the UN Secretary General of 1976-82, finally allege (1) that the above measures of displacement of Greek Cypriots (para 124 above) caused separation of families in a substantial number of cases.

They invoke Art 8 of the Convention and refer to para 211 of the Commission's Report on the two previous applications.

(bb) Respondent Government

127. The respondent Government, at Annex I (paras 56, 58) to their observations on the admissibility (2), submitted that the return of Greek Cypriots to the North, "other than those envisaged in the exchange of population agreement ..., would not only endanger the security of life of the Turkish Cypriots but would also undermine the bi-zonal solution which constitutes the only basis for the peaceful co-existence of the two communities in the future ... Those who are moving to the south are doing so of their own free will and within the framework of the agreement reached between UNFICYP and the Turkish Federated State of Cyprus, whereby people wishing to move south submit their application through UNFICYP and are allowed to do so only after UNFICYP confirms that they have not submitted their application under pressure of any sort and that their wish to move south is genuine."

128. The respondent Government, at Annex I (paras 60-62) to their observations on the admissibility (2), further submitted that the exodus of Turkish Cypriots from Cyprus over the years and subsequently under EOKA's terroristic activity, enhanced by administrative and economic discrimination and later by the inhuman treatment of the Turkish Cypriots during the 11 years preceding 1974, had been immense. 40,000 Turkish Cypriots lived in London alone, thousands in Australia, Canada and other places; each Turkish

---

(1) Final submissions para 66.

(2) Cf para 53 above.

Cypriot home in Cyprus had one or more sons and daughters living in Turkey without severing relations and property interests in Cyprus. Seasonal workers had gone and come from Turkey; the Turkish Community, deprived for years of the opportunities of economic and social development as a result of the policy of the Greek Cypriots, needed to import seasonal labourers in order to reactivate the economic resources today available to it. Cyprus had been the home of Turks and Greeks for 400 years. The population ratio had varied. The fact that Turkish Cypriots were methodically squeezed out of Cyprus by the Greeks in the past gave the latter no right to maintain their unfair, unjust and artificially created position of advantage. Turkish Cypriots were entitled to return to their native land if they so wished; this was also recognised by the 1960 Constitution.

129. The respondent Government finally, at Annex I (para 63) to their observations on the admissibility (1), stated that, of the 1,800 Greek Cypriots who chose to stay in the North, there might be some who were separated from their families who moved to the South. This, however, did not concern Turkey.

(b) Opinion of the Commission

130. The Commission recalls that the issue of displacement of persons was examined under Art 8 of the Convention in Part II, Chapter 1, of its Report on Applications N°s. 6780/74 an 6950/75. The Commission then also noted (at paras 92 et seq), when examining the question of displacement of persons, the applicant Government's allegations concerning a compulsory exchange of population and information as to the settlement of Turkish Cypriots and Turkish settlers in the North (para 94).

131. The Commission considered in the previous case (at para 208) "that the prevention of the physical possibility of the return of Greek Cypriot refugees to their homes in the north of Cyprus amounts to an infringement, imputable to Turkey, of their right to respect of their homes" which could not be justified on any ground under para (2) of Art 8. It concluded that, "by the refusal to allow the return of more than 170,000 Greek Cypriot refugees to their homes in the north of Cyprus, Turkey did not act, and was continuing not to act, in conformity with Art 8 of the Convention in all these cases."

---

(1) Cf para 53 above.

The Commission further considered (at para 210), with regard to Greek Cypriots transferred to the south under various intercommunal agreements, that the prevention of the physical possibility of the return of these Greek cypriots to their homes in the north of Cyprus generally amounted to an infringement, imputable to Turkey and not justified under para (2), of their right to respect for their homes under para (1) of Art 8. It concluded that, "by the refusal to allow the return to their homes in the north of Cyprus to several thousand Greek Cypriots who had been transferred to the South under intercommunal agareements, Turkey did not act, and was continuing not to act, in conformity with Art 8 of the Convention in all these cases."

132. The Commission finally recalls that it examined the issue of separation of families under the heading "Displacement of persons" in its Report on Applications N°s 6780/74 and 6950/75. It then found:

- that the separation of Greek Cypriot families resulting from measures of displacement imputable to Turkey under the Convention must also be imputed to Turkey. The continued separation of families resulting from Turkey's refusal to allow the return of Greek Cypriot refugees to their family members in the North, the separation of families brought about by expulsions of family members across the demarcation line, or by transfers of members of the same family to different places of detention, must therefore be imputed to Turkey (para 205); and
- that the separation of families brought about by measures of displacement imputable to Turkey were interferences, with the right of the persons concerned to respect for their family life as guaranteed by para (1), which could not be justified on any ground under para (2) of Art 8 (para 211).

The Commission then concluded (at para 211) that, by the separation of Greek Cypriot families brought about by measures of displacement in a substantial number of cases, Turkey had not acted in conformity with her obligations under Art 8 of the Convention.

133. In the present case the Commission, again examining the issue of displaced persons under Art 8 of the Convention, confirms the finding made, at para 168 of its Report on the previous applications, that displaced Greek Cypriots in the South are physically prevented from returning to the northern area as a result of the fact that the demarcation line across Cyprus ("green line" in Nicosia) is sealed off by the Turkish army. This fact of common knowledge is not disputed by the respondent Government (cf para 127 above).

134. The Commission finds that the continuation of this situation, since the adoption of its Report on the first two applications on 10 July 1976, must in the circumstances of the present case be considered as an aggravating factor.

135. The Commission concludes, by 13 votes against two with two abstentions that, by her continued refusal to allow over 170,000 Greek Cypriots the return to their homes in the North of Cyprus, Turkey continues to violate Art 8 in all these cases.

136. The Commission further finds that the continued separation of families resulting from Turkey's refusal to allow the return of Greek Cypriots to their family members in the North must in the circumstances of the present case be considered as an aggravating factor.

It concludes, by 14 votes against two and with one abstention, that, in the cases of continued separations of families resulting from Turkey's refusal to allow the return of Greek Cypriots to their family members in the North, Turkey continues to violate Art 8 of the Convention.

Chapter 2. - Deprivation of Possessions

(a) Submissions

(aa) Applicant Government

137. The applicant Government submit (1) that Greek Cypriots in the North of Cyprus have since 18 May 1976 been deprived of their possessions by the occupation by Turkish forces of that area, where thousands of houses and acres of land, enterprises and industries belonging to Greek Cypriots exist; by the eviction of the remaining Greek Cypriot population from those possessions; by seizure, appropriation etc of lands and houses belonging to Greek Cypriots in the occupied area; by robbery of the agricultural produce etc and looting of properties belonging to the Greek Cypriots in that area; and by wanton destruction of Greek Cypriot properties in that area.

---

(1) Final submissions paras 72 - 86.

138. As regards immovable property, the applicant Government state that, during the above period, all privately owned land and houses of Greek Cypriots in the North have been under the full control of the Turkish Army, which prevents the owners of such properties from returning thereto and enjoying them. Practically all such property was distributed to Turkish Cypriots, or to Turks brought from Turkey in order to settle in that area, and measures were taken to institutionalise such distribution by the "Law to Provide for the Housing and Distribution of Land and Property of Equal Value", of the "Legislative Assembly" of the so-called "Turkish Federated State of Cyprus" ("TFSC"), of 16 August 1977. Under this "law" properties of Greek Cypriots were allocated to Turks. An amendment of 10 August 1982 extended, aggravated and solidified the violations of property rights of Greek Cypriots (issue of new certificates of "definite" possession, acceptance of members of the Turkish Army as persons "entitled" to such property, provision for "compulsory acquisition" of such property, without compensation, by the "TFSC", and substitution of the legal Land Registry of Cyprus by a Registry kept by the "TFSC". In January 1983 this "law" was implemented by co-operation by Turkish controlled institutions which gave mortgages to persons who had received "definite possession" certificates. The same "law" by Sect 59 A extinguished the rights of Greek Cypriots to reclaim loans and mortgages formerly held by them. The respondent Government approved and assisted in the implementation of that law. The first "definitive possession certificates" were given to Turks in the occupied area on 20 December 1982; it is expected that, by the end of 1983, all Turkish Cypriots who moved from the South to the North will get their certificates.

139. The applicant Government further state that, in July 1982, 32 houses owned by Maronites (who according to the Cyprus Constitution opted to belong to the Greek Cypriot community) were seized by the Turkish Army in the villages of Asomatos, Karpasia and Kormakitis, in order to house army officers' families. This incident, having subsequently been cloaked by "regularising" actions of the Turkish Cypriot "authorities", was referred to in the UN Secretary General's Report of 1 December 1982.

Operational hotel units in the occupied area which belonged to Greek Cypriots have been operated by Turks without any authority from their owners (who were prevented from repossessing them). The "Cyprus Turkish Tourism Enterprises Co Ltd", the major shareholders therein being Turkish organisations, and the Turkish Tourism and Information offices in European countries, continued to promote tourism in relation to the hotels in question. Some hotels continued to operate as clubs for Turkish army officers or to be occupied by their families. Turkish officials, visiting the occupied area, assisted in the operation and exploitation of the hotels in question.

Agricultural, commercial and industrial enterprises belonging to Greek Cypriots in the occupied area, which were originally seized by the Turks following the invasion, continued to be occupied, operated and exploited by the latter on a permanent basis without any authority from their owners (who were prevented from repossessing them). A substantial number of Greek Cypriot factories were put into operation for the first time after 1977.

140. As regards movable property, the applicant Government state that looting, by or with the support of Turkish troops, of houses and business premises belonging to Greek Cypriots in the occupied area, especially in the Famagusta area, and robbery of the agricultural produce, stock in commercial and industrial enterprises, and other movables belonging to Greek Cypriots in the occupied area have continued. A substantial part of the citrus fruit belonging to the Greek Cypriots in the Morphou area has since 1981 been stolen and exported to the United Kingdom through a UK public company under the name of Wearwell Ltd operating in the occupied area and run by two Turkish Cypriots. This operation has been encouraged and facilitated by the respondent Government, which has recently authorised the said company to carry out associated activities on the mainland.

141. The applicant Government finally complain of various incidents, during the relevant period, of wanton destruction of properties belonging to Greek Cypriots in the occupied area by Turkish troops or Turks acting with the authority or support of the Turkish Army.

142. The applicant Government submit that the above facts constitute continuing violations of Art 1 of Protocol N° 1 to the Convention.

(bb) Respondent Government

143. The respondent Government, at Annex I (paras 64 - 72) to their observations on the admissibility (1), stated that agricultural land abandoned by Greek Cypriots in North Cyprus was allocated to Turkish Cypriot displaced persons by the Government of the Turkish Federated State of Cyprus, acting as custodian of alien properties, by virtue of the Immovable Alien Property Allocation and Utilization Law, 1975. The produce of such land went to the allottees who cultivated it. The same procedure was applied by the Greek Cypriot Administration regarding agricultural land and other

---

(1) Cf para 53 above.

properties abandoned by Turkish Cypriot displaced persons in South Cyprus which was approximately equal in extent to those left by Greek Cypriots in the North. The Greek Cypriot displaced persons to whom Turkish-owned land was allocated cultivated those lands and utilized their produce for the maintenance and rehabilitation of their families.

144. The complaint regarding the distribution of Greek Cypriot owned houses, land and places of business to Turkish Cypriots was also groundless because the Greek Cypriot Administration similarly allocated the houses, lands and places of business belonging to 90,000 Turkish Cypriots, who moved North, to the displaced Greek Cypriots who now occupied and utilized them. Everything left by the Turkish Cypriots in the way of immovable property was similarly distributed by the Greek Cypriot Administration.

145. The complaint of "looting of appreciable quantities of commercial and other movable properties from Greek Cypriot owned business, houses and other premises especially in the Famagusta Area" was entirely groundless. When the Greek Cypriots fled, there were no longer any local councils in the villages and this created a gap in the administration. A great deal of theft and looting was committed by Greek Cypriots and members of the Greek Cypriot National Guard. The fact that isolated instances of theft and looting should have been committed by members of the Turkish Cypriot Community was a matter of personal responsibility dealt with by the Courts of Law of that Community.

If reference was made to items of furniture and other household goods taken from Greek Cypriot houses and other premises for the rehabilitation of the 90,000 displaced Turkish Cypriots, these were not stolen but taken on lawful authority of the Government of the Turkish Federated State of Cyprus on the same criteria as the properties left behind by the Turkish Cypriots in South Cyprus were taken and utilized by the Greek Cypriot Administration. A record of everything taken was kept and would be produced when the question of mutual compensation would come up for consideration.

146. The complaint of robbery of agricultural produce, livestock, stocks in commercial and industrial enterprises and other movables belonging to Greek Cypriots was equally misleading and malicious as anything taken from the Greek Cypriot commercial and industrial enterprises or other premises was not stolen but taken on the lawful authority of the Turkish Federated State of Cyprus for the rehabilitation of the 90,000 displaced Turkish Cypriots; a record of the items taken was kept.

147. The respondent Government finally stated that the complaint of wanton destruction of properties belonging to Greek Cypriots was entirely false. There had not been any wanton destruction of houses and groves belonging to Greek Cypriots or to churches. On the contrary most of the Greek Cypriot houses or other premises damaged during the fighting had been repaired and a number of half constructed houses had been completed by the Turkish Federated State of Cyprus. One or two houses might have been pulled down by the Municipalities, because they were in a state of collapse and constituted a danger to the lives of the passers-by, and some orange groves might have deteriorated as the result of lack of water due to the wanton destruction by Greek Cypriots of water pumps and installations before they left for the South during the armed conflict in 1974. Depletion of the water resources of the Morphou area and the dangers of salinization due to overpumping were well known facts. It might well be that those groves which had unavoidably dried had been replanted with vines or other crops not requiring the same quantity of water as citrus. There had certainly been no case of wanton destruction of groves for planting vines.

(b) Opinion of the Commission

148. As regards the displacement of the overwhelming majority of the Greek Cypriot population from the northern area, where it left behind movable and immovable possessions, and the established fact that these displaced persons are not allowed to return to their homes in the North, and thus to property left there, the Commission refers to its above findings under the heading "Displacement of Persons" (paras 132 et seq).

149. As to immovable property, the Commission further recalls that, in its Report on Applications N°s 6780/74 and 6950/75, it found (at para 472) elements of proof of taking and occupation of houses and land by Turkish Cypriots and Turks from the mainland, both military personnel and civilians. The Commission then observed (at para 473) that about 40,000 Turkish Cypriots originally residing in the South had, from 1974 onwards , moved gradually to the North of the Island, where accommodation had to be found for them. That supported allegations concerning the occupation on a considerable scale of houses and land in the North belonging to Greek Cypriots, and the establishment of an office for housing to regulate the distribution. The Commission therefore accepted the evidence obtained as establishing the taking and occupation of houses and land belonging to Greek Cypriots (para 474). The Commission also found strong indications that Turks from the mainland had settled in the North in houses belonging to Greek Cypriots (para 476) and it found it established that agricultural, commercial and indistrial enterprises were taken out of the hands of Greek Cypriots (para 477) and that hotels were put into operation in the northern area (para 478).

150. As to movable property, the Commission recalls its finding, at para 481 of its Report on Applications N°s 6780/74 and 6950/75, that looting and robbery on an extensive scale, by Turkish troops and Turkish Cypriots have taken place.

151. The Commission finally recalls its finding in Applications N°s 6780/74 and 6950/75 (at para 48 of its Report) that destruction of property had taken place in many cases.

152. The Commission concluded in Applications N°s 6780/74 and 6950/75 (at para 486 of its Report) that there had been deprivation of possessions of Greek Cypriots on a large scale, imputable to Turkey and not necessary for any of the purposes mentioned in Art 1 of Protocol N° 1.

153. In its examination of the complaints concerning interference with possessions in the present case, the Commission notes that, since the adoption of its Report in the previous applications, deprivation of property of Greek Cypriots in the North of the Island has been confirmed by what is referred to by the applicant Government as the "Law to Provide for the Housing and Distribution of Land and Property of Equal Value" of 16 August 1977. There have also been interferences with property rights of some 7,000 Greek Cypriots who since 18 May 1976 (when the Commission terminated its investigation in the first two applications) have moved to the South (cf above para 124 in fine). The Commission observes that the occupation and taking of Greek Cypriot property in the North is not disputed by the respondent Government (cf para 143 above).

154. The Commission is of the opinion that the measure described of 16 August 1977 consolidates the earlier occupation of immovable property and for that reason constitutes a violation of Art 1 of Protocol N° 1. In addition it is not disputed that new takings of movable property occurred after the adoption of the Report of the Commission of 10 July 1976.

155. The Commission concludes, by 13 votes against one and with three abstentions, that Turkey has violated Art 1 of Protocol N° 1.

Chapter 3. - Absence of Remedies

(a) Submissions

156. The applicant Government submit (1) that, throughout the relevant period, there was no effective relevant remedy in the Turkish courts or before any authority in the Turkish occupied area of Cyprus or in Turkey in respect of any of the violations complained of. According to the so-called "Constitution of the TFSC" practically all the human rights of the Greek Cypriots that have been violated are not even recognised.

The applicant Government invoke Arts 6 and 13 of the Convention.

157. The respondent Government, at Annex I (para 73) to their observations on the admissibility (2), submitted that all cases of offences committed against Greek Cypriots living in the North of Cyprus and their properties, which come to the knowledge of the authorities of the Turkish Federated State of Cyprus, are investigated and referred to courts. Severe sentences were imposed on a number of persons convicted for serious criminal offences committed during 1976 on Greek Cypriots living in the North.

(b) Opinion of the Commission

157. In its decision on the admissibility the Commission found under Art 26 of the Convention (at para 39 of The Law) "that the remedies indicated by the respondent Government cannot, for the purposes of the present application, be considered as relevant and sufficient and that they need not, therefore, be exhausted."

158. The Commission, in its examination of the merits of this complaint, does not find it necessary to add anything to its finding in the decision on admissibility.

---

(1) Final submissions paras 91 et seq.

(2) Cf para 53 above.

Chapter 4. - Discrimination

(a) Submissions

159. The applicant Government submit (1) that, in as much as the above violations were directed against members of one of the two communities in Cyprus, namely the Greek Cypriot community because of their ethnic origin, race and religion, the respondent Government should be found responsible for continuing violations of Art 14 of the Convention in failing to secure the rights and freedoms set forth in the Convention without discrimination on the grounds of ethnic origin, race and religion as required by that Article.

160. The respondent Government did not participate in the proceedings on the merits.

(b) Opinion of the Commission .

161. The Commission recalls that, in its Report on Applications Nos 6780/74 and 6950/75 (at para 503), having found violations of a number of Articles of the Convention, it noted that the acts violating the Convention were exclusively directed against members of one of the two communities in Cyprus, namely the Greek Cypriot community. The Commission then concluded that Turkey had thus failed to secure the rights and freedoms set forth in these Articles without discrimination on the grounds of ethnic origin, race and religion as required by Art 14 of the Convention.

162. Having again found violations of the rights of Greek Cypriots under a number of Articles of the Convention in the present case, the Commission does not consider it necessary to add anything to its finding under Art 14 in the previous case.

---

(1) Final submissions para 97.

Chapter 5. - Position of Turkish Cypriots

163. The applicant Government allege (1) that, during the relevant period, Turkey committed continuous violations of the rights of the Turkish Cypriots living in the occupied area, by her policy and operation of colonisation and her policy and measures of segregation by the force of arms of the two communities within the Cyprus population on the basis of what came to be known as the "Attila line". These violations fall under two categories: various systematic acts of violence, threats, insults, and other oppressive acts by Turkish settlers from Turkey, encouraged and or countenanced by the presence of the Turkish troops, and prevention of any return by Turkish Cypriots, who were transferred from the Government controlled area in 1974-75 to the occupied area, to their homes and properties in the Government controlled area and denial of any exercise of their rights in respect of such property. In respect of both the above categories of violations no effective remedy before any authority exists.

The applicant Government submit that the above facts constitute continuous violations of Arts 3, 5, 6 and 8 of the Convention and Art 1 of Protocol N° 1.

164. The respondent Government, at Annex I (para 91) of their observations on the admissibility (1), submitted that the above complaint was "another example of the insincere and dishonest way in which those who have tried to annihilate the Turkish Community and have caused them to suffer all sorts of hardships, now, for purely propaganda purposes, express false and mock concern for the well-being of the Turkish Cypriots."

165. The Commission, having regard to the material before it, finds that it does not have sufficient available evidence enabling it to come to any conclusion regarding this complaint.

---

(1) Final submissions paras 98 et seq.

PART IV - CONCLUSIONS

The Commission,

Having examined the allegations in this application (see Parts II and III above);

Having found that Art 15 of the Convention does not apply (see Part I, Chapter 4);

Arrives at the following findings and conclusions:

1. Missing persons (para 123 above)

The Commission, having found it established in three cases, and having found sufficient indications in an indefinite number of cases, that Greek Cypriots who are still missing were unlawfully deprived of their liberty, in Turkish custody in 1974, noting that Turkey has failed to account for the fate of these persons, concludes by 16 votes against one that Turkey has violated Art 5 of the Convention.

2. Displacement of persons and separation of families (paras 135, 136 above)

The Commission concludes, by 13 votes against two with two abstentions that, by her continued refusal to allow over 170,000 Greek Cypriots the return to their homes in the North of Cyprus, Turkey continues to violate Art 8 in all these cases.

The Commission further concludes by 14 votes against two and with one abstention, that, in the cases of continued separation of families resulting from Turkey's refusal to allow the return of Greek Cypriots to their family members in the North, Turkey continues to violate Art 8 of the Convention.

3. Deprivation of possessions (para 155 above)

The Commission concludes, by 13 votes against one and with three abstentions, that Turkey has violated Art 1 of Protocol N° 1.

4. **Absence of remedies** (para 158 above)

The Commission, in its examination of the merits of this complaint, does not find it necessary to add anything to its finding in the decision on admissibility.

5. **Discrimination** (para 162 above)

Having again found violations of the rights of Greek Cypriots under a number of Articles of the Convention in the present case, the Commission does not consider it necessary to add anything to its finding under Art 14 in the previous case.

6. **Position of Turkish Cypriots** (para 165 above)

The Commission, having regard to the material before it, finds that it does not have sufficient available evidence enabling it to come to any conclusion regarding this complaint.

Secretary to the Commission
(H.C. KRUGER)

President of the Commission
CA Norgaard
(C.A. NORGAARD)

/..

Separate opinion of Mr M.A. Triantafyllides

1. I am in agreement with the findings of the Commission regarding the violations of the Convention which are referred to in the Report of the Commission in the present case.

2. In order to avoid making this opinion unduly lengthy I repeat that I still adhere in principle to the views which I have expressed in my Separate Opinion in the previous case of Cyprus v Turkey (Applications N°s 6780/74 and 6950/75) and, also, I endorse the salient features of the Separate Opinion of Mr G. Tenekides in the present case (N° 8007/77).

3. I wish, furthermore, to add the following:

(a) Missing Persons:

(i) In addition to the violation of Art 5 of the Convention, which was found by the Commission, I am of the view that there have been established violations of Arts 3, 4 and 8 of the Convention, of which missing persons are the victims, and violations of Arts 3 and 8 of the Convention, of which the families of missing persons are the victims, especially as the suffering to which the families of missing persons are being daily subjected for over nine years, due to the persistent refusal of the respondent Government of Turkey to account for their fate, amounts to inhuman treatment of the gravest nature.

(ii) Also, I think that it cannot be really seriously disputed that there is a presumption of Turkish responsibility for deprivation of life contrary to Art 2 of the Convention in so far as there are concerned any missing persons who may have died in the meantime whilst in Turkish detention.

(iii) Lastly, there should be pointed out that the Commission has been overcautious in weighing uncontradicted oral evidence adduced in relation to the five cases of missing persons in respect of which witnesses were heard by a Delegation of the Commission in Strasbourg. I am, consequently, of the view that it could have been found, with adequate certainty, that all five missing persons concerned, and not only three of them, were, at the material time, in Turkish detention.

(b) Displacement of persons and deprivation of possessions

(i) I am of the opinion that the settlement of Turkish settlers in the northern part of Cyprus occupied by the Turkish military forces constitutes, by itself, a separate violation of Art 8 of the Convention and Art 1 of the First Protocol to the Convention.

(ii) Also, there should be observed, in addition to the finding of the Commission in the present Report regardin the violation of Art 1 of the First Protocol to the Convention, that the violation of the said Art 1 by mean of deprivations of possessions which were found by the Report of the Commission in the previous case of Cyprus v Turkey (Applications N°s 6780/74 and 6950/75) are still continuing in a most aggravated manner.

(c) Violations of human rights of Turkish Cypriots

In my view there exists before the Commission material which, having remained uncontradicted, justifies, prima facie, further examination of whether there are occurring continuous violations of human rights of Turkish Cypriots now living in the northern part of Cyprus occupied by the Turkish military forces.

4. I would like to conclude this Separate Opinion by stress that there exists great urgency to restore the public order of Europe in Cyprus and, in this connection, the Committee of Ministers of the Council of Europe are invited to take immediate action in order to ensure the restoration of the human rights wh have been found to be violated by Turkey.

Professor Dr Bülent Daver's Dissenting Opinion

May I take the liberty to say that I am not in agreement with the present Report for the reasons stated below.

1. First of all, in my view the Commission's decision on admissibility did not properly deal with the problem of the *locus standi* of the applicant Government (1). As I stated in my previous dissenting opinion, joined to the Report of the Commission adopted on 10 July 1976 "Applications N°s 6780/74 and 6950/75 (Cyprus against Turkey)", the Commission should have had the primary task of examination from the point of view of *ius standi* of an application referred to it by a High Contracting Party under Art 24 of the Convention. However, in this Report the Commission refrained again from dealing with the *ius standi* of the applicant Government.

In my opinion, the actual applicant Government is not the legal and legitimate authority entitled to bring a case before international instances. The Cyprus Constitution of 1960 and international agreements (London and Zurich Agreements and the Treaty of Guarantee) which gave birth to the Cyprus Republic originally envisaged a *sui generis* state composed of two communities. The Constitution of Cyprus expressly recognized the Turkish community not as a mere minority but as a full founding partner. The Constitution also gave the Turkish Vice-President powers beyond those of a normal Vice-President, including the right of vetoing the decisions taken by the President. (See Cyprus Constitution, Arts 1, 46, 47-c, 49-d, 50-(1)a, 54-a, b, 57. Peaslee, Constitutions of Nations, 3rd Ed 1968, Vol III, Europe, pp 138-216.)

---

(1) Because of the Commission's constant and general practice not to allow the members to make separate opinions to the admissibility decision, I am stating my objection here as to the admissibility decision. For my previous separate opinion to the Report of the Commission in Applications N°s 6780/74 and 6950/75 (Cyprus against Turkey), see pp 186 - 192.

/...

However, in this case as in the previous applications, the Cyprus Government did not act in conformity with the Cyprus Constitution and the international instruments cited above. Instead, the Greek Cypriot authorities, in flagrant violation of the 1960 Constitution, unilaterally abrogated in practice the legal status of the Turkish community and of their legal representatives such as Vice-President and the Turkish Ministers.

2. In my opinion, the Commission's present Report, adopted on 4 October 1983, does not comply with Art 31 of the Convention. Art 31 envisages, in wording and in spirit, a full investigation of the facts and requires clear-cut evidence as to the findings. The Law part of the Report could only be based upon such extensive and clear-cut findings.

3. In the very important issue of missing persons, for instance, almost half of the testimonies by Greek Cypriots in a "very conveniently chosen" five illustrative cases, heard before the Commission's Delegates in Strasbourg, are not credible and therefore not convincing.

4. I would also like to emphasize the fact that the Commission held an oral hearing without the participation of the respondent Government, although Art 28 (a) of the Convention expressly provides for the participation of the two Parties. The respondent Government, on the ground that they are not recognising the "Greek Cypriot Administration" as the legitimate representatives of the Cyprus Republic, did not participate in the proceedings on the merits before the Commission. The Commission, which observed the non-cooperation of the respondent Government, decided to make an Interim Report to the Committee of Ministers to complain about this matter. But, the Commission, instead of awaiting the decision of the Committee of Ministers, went ahead with the proceedings and held an oral hearing with one Party only. In my opinion, this is incompatible with and contrary to the wording and the spirit of the Convention. The reading of Art 28 (a) of the Convention clearly shows this point. I must add that the Committee of Ministers' decision did not tackle the essence of the problem.

Furthermore, the Commission is not entitled to give a "judgment by default", because the Commission is not a court, but mainly an investigating body, performing quasi-judicial duties and making inquiries under the Convention. Therefore, the Commission cannot give an opinion in absentia like domestic or international courts. It can be argued that this is on account of the non-cooperating attitude of the respondent Government. However, as I stated earlier, the Commission's task and obligation should have been to refer it to the Committee of Ministers and suspend its proceedings until the Committee of Ministers brings a proper solution to this political problem.

5. It is my considered judgment that, in order to cast more light on the complex facts relevant to this case, the Commission should have examined *ex officio* the Memorial submitted by the respondent Government to the Committee of Ministers.

Conclusion

The Commission's Report, unfortunately like the previous one, is incomplete, lacking in many crucial facts relevant to the case, arrives at conclusions without the counter evidence and omits some important factual and legal issues indicated above. I consider that the content and the presentation of the Report as such do not reflect in an accurate and complete way the historical, factual and legal situation in Cyprus.

Finally, as I stated in my separate opinion to the Commission's Interim Report, "the best way of serving the cause of European public order and watching over the respect of human rights within the ambit of our Convention would be to have a probing analysis of this important and many sided issue." For these reasons, I am against the Report as a whole, and I am opposed to the conclusions of the Commission therein.

Separate opinion of Mr G. Tenekides (1)

While accepting the conclusions of the Commission as set out in particular in paras 123, 134, 135, 136, 155 and 161 of the Report I must make it clear that I differ on some points which refer:

- to a difference of approach on a matter which is of vital importance in this case, namely the question of the missing persons;
- the absence of any reference in the Report to a certain number of provisions of the Convention which were applicable in the present case and which in the opinion of the undersigned were or are still being violated by the actions of officers of the respondent Government on Cypriot territory.

I. Allegations of the applicant Government relating to the treatment and fate of missing persons

(a) In para 87 of the Report it is recalled that the Commission requested the applicant Government to supply evidence to show that the missing persons were really in detention under Turkish military control and that there were witnesses who had actually seen this.

It is precisely on this question of the burden of proof that I differ fundamentally from the point of view adopted by the Commission.

One fact emerges clearly from the circumstances of the case: the persons whose names were on the population registers of the Cypriot towns and villages disappeared following what has been called Turkish "military action" which occurred in two successive waves in July and August 1974. Since that time nobody (with some exceptions) has been able to provide any information on the fate of these persons who are euphemistically described as missing. No Greek Cypriot, whether a Government officer or private individual, has been able during the last nine years to enter either the occupied zone in North Cyprus or Turkey itself in order to obtain information about the treatment undergone by these persons. Nor has anything come to light either from Turkish Government sources or through the press. There has in fact been complete silence on the matter.

---

(1) Original French.

/...

Following the state of belligerence created by the intervening power there was created in Cyprus in 1974 a large area in which the territorial sovereign has no power of control. Anything may occur in this area: arrests; detention in concentration camps; deportation to Turkey; inhuman and degrading treatment; in extreme cases execution without anyone (except the officers of the respondent Government) being able to prove the circumstances in which these persons have undergone their detention. In these circumstances to require the applicant Government (which has absolutely no means of obtaining information on what happens in the prisons in North Cyprus or Turkey) to prove that these persons have undergone any particular treatment contrary to Arts 5, 4, 3 and 2 is to ask for the impossible.

The special features of the case call for a different legal approach to that currently applied both as regards the basis of liability and consequently also as regards the burden of proof.

As a general rule (and this applies in the present case) the respondent Government is automatically responsible for damage caused by abnormal activities or activities which involve exceptional risks if they occur or originate within its jurisdiction. That being so a military occupation following on a series of hostile acts and massive and repeated violations of the Convention (see Commission's Report of 10 July 1976 on Applications N°s 6780/74 and 6950/75, Cyprus v Turkey) produces a type of liability which may be classified as strict liability. It must accordingly be admitted that misconduct on the part of individuals exercising government authority, whatever their exact position in domestic law, results in a violation by the State of its obligations under the Convention. The actions of such officers in a situation where the pre-existing legal order has been fundamentally upset by the occupying power is a risk liability for which responsibility must be borne exclusively by the State which produced this situation.

As regards the burden of proof, it is true that in principle the complaining or applicant State is under an obligation to prove the internationally illegal act prejudicial to its interests. This proof is facilitated by the "presumption of effectiveness" which applies to the territorial sovereign with respect to its actions (including illegal actions) within its territorial and maritime frontiers. It follows that the presumption of effectiveness based on normal territorial control does not necessarily imply knowledge by the applicant State of the illegal acts committed on the territory of the State accused of having violated the provisions of the Convention. This is a rule of international law of general application. This point should be noted because the organs of the Convention have frequently and rightly referred to the rules of international law (consistent case-law illustrated by: Application N° 6315/73, DR 1, p 73; Engel judgment, para 72; Lawless judgment, paras 39 - 41; Court's judgment in the Irish case, para 222; Application N° 343/57, Yearbook 2, p 413; Application N° 788/76, Yearbook 4, p 116 etc).

What has been said above with regard to the burden of proof appears clearly from the following passage of the International Court of Justice's decision in the Corfu Channel case:

> "It is clear that knowledge of the minelaying cannot be imputed to the Albanian Government by reason merely of the fact that a minefield discovered in Albanian territorial waters caused the explosions [....] It cannot be concluded from the mere fact of the control exercised by a State over its territory and waters that that State necessarily knew, or ought to have known, of any unlawful act perpetrated therein, nor yet that it necessarily knew, or should have known, the authors. This fact, by itself and apart from other circumstances, neither involves prima facie responsibility nor shifts the burden of proof. On the other hand, the fact of this exclusive territorial control exercised by a State within its frontiers has a bearing upon the methods of proof available to establish the knowledge of that State as to such events. By reason of this exclusive control, the other State, the victim of a breach of international law, is often unable to furnish direct proof of facts giving rise to responsibility. Such a State should be allowed a more liberal recourse to interferences of fact and circumstantial evidence." (Reports of ICJ 1949, pp 18 - 22)

The concept of effectiveness of territorial control (which applies particularly to the respondent Party because, failing to comply with the requirements of Art 28, it refuses to co-operate with the Commission) may contribute to remedy the natural inequality between States in the production of evidence. In this connection Charles de Visscher (Les effectivités en Droit International Public, 1967, p 120) speaks of proof by presumption "which makes it possible to apply against the respondent State the means of information which it controls on the specific ground of the effectiveness of this control".

In the instant case it is for the applicant State to prove the existence before July and August 1974 of the persons subsequently reported missing on the basis of the population registers, but it would be contrary to the rules of international law and natural justice to require the applicant State to prove

/...

facts of which by the nature of things it has no knowledge seeing that they occurred on the territory over which the respondent exercises exclusive control either as a military occupant or as territorial sovereign. The undersigned considers that it would have been a correct application of the Convention to consider the specific case of persons reported missing by using the method which has just been indicated and which is better adapted to the special nature of the law governing inter-State relations (in particular inter-European relations), as they are regulated by the Convention, and above all a method better suited to the curcumstances of the present case.

The reasoning which I have just expounded brings me by a different path, which I consider the only appropriate means of approaching the case before us, to support the Commission's conclusions (para 123) concerning the violation of Art 5. But this is not the only provision which was violated in the case of the missing persons.

(b) In my opinion the Commission was under an obligation to apply Art 4 (1) of the Convention and to find that it had been violated.

Under this provision "no one shall be held in slavery or servitude". The fact that the persons reported missing in the present case (presuming they are still alive) have been detained for more than nine years without possible contact with their family amounts to servitude within the meaning of Art 4 (1). According to the definition given by the Commission in Van Droogenbroek v Belgium (Application N° 7906/77, para 79 of the Report), "in addition to the obligation to provide another with certain services the concept of servitude includes the obligation .... to live on another's property and the impossibility of changing his condition". It is not clear how in the case under consideration there can be any question of "services rendered" though servitude in the ordinary sense of the term implies a state of dependence or inferiority and a constraint. Moreover the notion of "services rendered" falls into the category of forced or compulsory labour (Art 4 (2)). What is relevant and well established in the instant case is that these persons were obliged to live on the territory (the "property") of another and that they were and are "unable to change their condition". This strictly speaking amounts to servitude.

(c) Though Art 5 is relevant, Art 3 is so in a greater degree. It states a fundamental rule which like that contained in Art 4 is mandatory law (jus cogens) (see Art 15 (2) of the Convention). A State is not only obliged not to violate this provision directly but also take all necessary preventive measures of an administrative nature or by passing statutes or making regulations to ensure that inhuman or degrading treatment does not occur on its territory. Detention or deprivation of freedom which continues for more than nine years in circumstances in which the families of the missing persons (wives, fiancées, fathers, mothers and children) are kept in complete ignorance of the fate of their close relatives amounts both as regards the persons directly concerned and as regards their families to inhuman treatment. There is a further aggravating circumstance: the respondent Government remains obstinately silent and refuses to engage in any dialogue: it does not reply to the families' petitions and is not prepared to allow any enquiry on the spot.

(d) Though in July 1976 when the Commission adopted its first Report on Applications N°s 6780/74 and 6950/75 there might have been some doubts as to their survival, at the end of 1983 the chance of discovering them alive has decreased to the point that it has practically disappeared. After nine years, in the face of enquiries from numerous different sources, including international organs and private associations, the respondent Government, which could and should have provided information, which might have been satisfactory, as to the fate of one or other of the missing persons, refuses to provide the least explanation to the persons concerned. There is therefore a strong presumption ("proof by presumption" to adopt the wording used above) that a certain number of the missing persons have died as a result of the treatment they received: inordinately long detention in solitary confinement, ie a violation in the instant case of Art 2 seeing that, according to the Commission's case-law, States have an obligation to take adequate measures to protect life.

II. Displacement of persons and separation of families

My comments relate to para 128 of the Report. Although the Commission in setting out in its Report the respective submissions of the Parties to the proceedings was obliged on equitable grounds to maintain an equal balance between the applicant and the respondent (even though the respondent Government's submissions were only put forward at an earlier stage of the proceedings relating to admissibility) it is nevertheless the Commission's duty not to repeat assertions which from an historical point of view are completely without foundation, particularly when facts which prove the contrary are a matter of common knowledge. The Report takes note of the respondent Government's submission that the colonists newly installed in the North of Cyprus are former Turkish Cypriots who had been expelled by the Greek Cypriots and merely returned to their former homes and homeland after 1974. On the contrary it is quite clear and irrefutably established that the persons installed by the occupation forces in the north of the island in violation of Art 49 (6) of the Geneva Convention of 12 August 1949 on "the protection of civilian persons in time of war" (1) are purely and simply colonists of Anatolian origin, and the difference in culture and behaviour has been a source of conflicts and clashes between these new arrivals and the Turkish Cypriots. Moreover the general question of repatriating Cypriots living outside Cyprus was dealt with in great detail by the Establishment Treaty between the United Kingdom, Greece, Turkey and the Republic of Cyprus of 16 August 1960 (Appendix D: "Nationality"). About 50,000 colonists transferred from Anatolia were installed in the north of Cyprus in violation of this agreement. The Commission, which is also an organ of "enquiry" (Art 28 of the Convention), had a duty to exclude ex officio any allegation which was manifestly and notoriously contradicted by the facts and to restrict itself to its final conclusion as set out in para 476 of its Report of 10 July 1976 and reproduced in para 149 in fine of the present Report: "the Commission .... found strong indications that Turks from the mainland had settled in the North in houses belonging to Greek Cypriots".

III. Destruction of cultural property

It is regrettable that, in the part of the Report relating to violations of Art 1 of the First Protocol to the Convention (paras 137 - 155), the Commission did not refer to cultural property (destruction of historical churches, ancient or medieval monuments, looting of private collections of ancient objects and private libraries particularly in the city of Famagusta; export and sale by auction of property of historical value) seeing that this heritage (which is both Cypriot and European) is an essential element affecting the identity of the community which is the victim of a situation which has lasted for more than nine years.

---

(1) "The occupying power shall not deport or transfer part of its own civilian population into the territory it occupies."

The Commission, which according to the Preamble is required in all circumstances to maintain the rule of law, was under a duty to apply Art 1 of the First Protocol, and in fact did so (paras 148 - 150) by drawing the legal consequences, but it also had a duty to apply this provision in the light of numerous conventions and agreements relating to the protection of cultural property (these texts are often of a declaratory nature and thus constitute customary law): first and foremost the Hague Convention of 14 May 1954 "for the protection of cultural property in the event of armed conflict" (1) and the "Convention concerning the means of prohibiting and preventing the illicit import, export and transfer of ownership in cultural property" adopted by the General Conference of UNESCO on 14 November 1970 (2).

IV. Failure of the Commission to make "proposals" under Art 31 (3) of the Convention

These last comments are based on the idea that law should be effective as otherwise there cannot be any valid system for the protection of human rights and fundamental freedoms. Though this principle of effectiveness is of general application it is particularly urgent and compelling in the instant case. It is now nearly ten years since the first Cypriot application was brought before the Commission (N° 6870/74) soon to be followed by a second (6950/75). This was the starting-point of rather long and meticulous proceedings which led to the adoption of the Report on 10 July 1976: the Commission found a considerable number of violations without making any proposals with a view to remedying a situation which is continuing indefinitely to the detriment of the rule of law in Europe. It took five years for the Commission to determine the merits of the present case after its decision on the admissibility of this application on 10 July 1978. The inordinate length of the proceedings (five years: 1978 - 1983) and also the fact that nothing has been done in the meantime to remedy the violations committed (3) will no doubt produce a feeling of frustration among the thousands of direct and indirect victims of the violations committed. Such a situation is certainly incompatible with the general spirit of the system of protection which obligatorily binds the member States of the Council of Europe.

---

(1) This Convention was ratified by the respondent State in 1965.

(2) See in particular Art 11: "The export and transfer of ownership of cultural property under compulsion arising directly or indirectly from the occupation of the country by a foreign power shall be regarded as illicit."

(3) See Committee of Ministers Resolution DH (79) 1.

According to the Preamble to the Convention, which refers expressly to the Universal Declaration of Human Rights, the Commission was required to comply with the requirement contained in Art 28 of that Declaration which provides that "everyone is entitled to an international order in which the rights and freedoms set forth in this Declaration can be fully realised".

In fact the mere statement of human rights as mandatory rules binding the member States implies as a logical corollary the guarantee of their effectiveness. In the instant case it would have been desirable that, as in the First Greek case, the Commission attempted, in addition to the violations which it found to exist, to discover the root of the trouble and indicate practical means of remedying it. Because here, far more than in the great majority of cases with which the Commission dealt, European public order has been disturbed. It follows that the charge of "denial of justice", which in the case of failure of the organs of the Convention to perform their task would certainly be raised, would involve particularly serious repercussions for everything connected with the future of our institutions.

It would therefore have been in accordance with the spirit of the Convention and the principle of effectiveness if the Commission were to decide to make proposals so that:

- urgent action was undertaken to provide a remedy for the breaches of the human rights found to be violated by the present Report. This remedial action would be coupled with an assurance that the rights of all Cypriots would be guaranteed and effectively protected;

- that without delay full information should be provided by the competent authorities of the respondent Government on the fate of the missing persons.

Unless considerations outside the Convention constitute an obstacle to the statement of such a conclusion in the Report it is impossible to find any good reason or counter-indication of a legal or technical nature for not formulating these two proposals which would have constituted the minimum required by European public order in such circumstances.

/...

Separate opinion of Mr. H. G. Schermers on the violation of Art. 8 with respect to the occupation of houses (para. 135 of the Report)

In its Report of 10 July 1976 on Applications N°s 6780/74 and 6950/75 the Commission found that in 1974 Turkey had violated Art 8 of the Convention with respect to a large number of people who were chased away from their houses and not allowed to return.

In its decision of 21 October 1977 the Committee of Ministers of the Council of Europe took note of the Commission's Report and asked that measures be taken in order to put an end to such violations as might continue to occur.

In my opinion this created an obligation for Turkey under Art 32 (4) of the Convention to remedy the violations found. Therefore, in the present case a violation of Art 32 (4) should be found rather than a violation of Art 8.

But there is another aspect of Art 8 in as far as it guarantees the right to everyone to respect for his home. The home is the building in which people live. With their chasing away the factual situation changes. After some time the people concerned will establish a new home. This does not legalise the violation of Art 8 but it will initiate a development which gradually replaces the obligation to restore the original situation by an obligation to provide due compensation. Generally, there will be other people occupying the building. They establish there their home. As Art 8 guarantees the right to respect for his home to everyone, the rights of the new occupant should be taken into account, even if the occupation was originally established on an invalid title. After a long period of time restoration of the status quo ante will become a violation of Art 8 with respect to the new occupant. It is difficult to establish how long this period is to be, because in fact it is a gradual process. On the one side, original occupants of a house will die, their rights being taken over by heirs who will succeed in the financial interest in compensation but who have not the attachments of a home. On the other side, children will be born in the house who have no other place which they could consider as their home.

I accept that Turkey has violated the Convention in 1974 and that it is still under the obligation to provide for a remedy (under Art 32 (4)), but I cannot accept as the only possible remedy that Turkey should (under Art 8) be obliged to break up the homes of all present occupants in order to allow the original occupants to return.

/...

APPENDIX I

HISTORY OF PROCEEDINGS

Item	Date	Note
A. Examination of the admissibility		
Introduction and registration of the application	6 September 1977	
Communication of the application to the respondent Government for observations on admissibility	9 September 1977	
Commission's deliberations and decision to invite applicant Government to submit further particulars	5 October 1977	MM. J.E.S. Fawcett, President G. Sperduti C.A. Nørgaard M.A. Triantafyllides L. Kellberg T. Opsahl C.H.F. Polak J.A. Frowein G. Jörundsson G. Tenekides S. Trechsel B. Kiernan
Commission's deliberations	12 October 1977	MM. J.E.S. Fawcett, President G. Sperduti C.A. Nørgaard F. Ermacora M.A. Triantafyllides E. Busuttil L. Kellberg B. Daver T. Opsahl C.H.F. Polak J.A. Frowein G. Jörundsson R.J. Dupuy G. Tenekides S. Trechsel B. Kiernan N. Klecker
Receipt of particulars of the application	4 November 1977	

Item	Date	Note
Respondent Government requests extension of time-limit for observations	1 December 1977	
Commission's deliberations and decision to extend time-limit as requested	7 December 1977	MM. J.E.S. Fawcett, President G. Sperduti C.A. Nørgaard B. Daver T. Opsahl J. Custers C.H.F. Polak J.A. Frowein G. Jörundsson G. Tenekides B. Kiernan N. Klecker
Commission's deliberations	13 December 1977	MM. J.E.S. Fawcett, President G. Sperduti C.A. Nørgaard E. Busuttil L. Kellberg B. Daver T. Opsahl J. Custers C.H.F. Polak J.A. Frowein G. Jörundsson R.J. Dupuy G. Tenekides S. Trechsel B. Kiernan N. Klecker
Receipt of respondent Government's observations	14 January 1978	
Commission's deliberations	9 February 1978	MM. J.E.S. Fawcett, President G. Sperduti L. Kellberg B. Daver T. Opsahl J. Custers J.A. Frowein G. Jörundsson G. Tenekides S. Trechsel B. Kiernan N. Klecker

Item	Date	Note
Applicant Government request extension of time-limit for observations in reply	14 February 1978	
President's Order extending time-limit as requested	15 February 1978	Mr Fawcett
Receipt of applicant Government's observations in reply	3 March 1978	
Commission's deliberations and decision to hold a hearing	7 March 1978	MM. J.E.S. Fawcett, President G. Sperduti C.A. Nørgaard E. Busuttil L. Kellberg B. Daver T. Opsahl J. Custers C.H.F. Polak J.A. Frowein G. Jörundsson G. Tenekides S. Trechsel B. Kiernan N. Klecker
Commission's deliberations	4 July 1978	MM. J.E.S. Fawcett, President G. Sperduti C.A. Nørgaard F. Ermacora M.A. Triantafyllides E. Busuttil L. Kellberg B. Daver T. Opsahl J. Custers R.J. Dupuy G. Tenekides S. Trechsel B. Kiernan N. Klecker

Item	Date	Note
Hearing on admissibility; Commission's deliberations	5-7 July 1978	MM. J.E.S. Fawcett, President G. Sperduti C.A. Nørgaard F. Ermacora (on 5 and 6.7) M.A. Triantafyllides E. Busuttil L. Kellberg B. Daver T. Opsahl J. Custers R.J. Dupuy G. Tenekides S. Trechsel B. Kiernan N. Klecker Applicant Government MM. L.G. Loucaides, Agent C.G. Tornaritis C. Pilavachi I. Brownlie F. Jacobs Respondent Government MM. I. Unat, Agent E. Lauterpacht M.N. Ertekün N. Bratza R. Arim U.S. Onan H. Pazarci E. Güvendiren A. Güven O.E. Akbel
Commission's deliberations and decision on admissibility	10 July 1978	MM. J.E.S. Fawcett, President G. Sperduti C.A. Nørgaard M.A. Triantafyllides L. Kellberg B. Daver T. Opsahl R.J. Dupuy G. Tenekides S. Trechsel B. Kiernan N. Klecker

/...

Item	Date	Note
Commission's deliberations	**11 July 1978**	**MM. J.E.S. Fawcett, President** **G. Sperduti** C.A. Nørgaard L. Kellberg B. Daver T. Opsahl R.J. Dupuy G. Tenekides S. Trechsel B. Kiernan N. Klecker
Commission adopts text of decision on admissibility	10 October 1978	MM. J.E.S. Fawcett, President G. Sperduti B. Daver T. Opsahl R.J. Dupuy G. Tenekides S. Trechsel B. Kiernan N. Klecker
Communication of text of admissibility decision to the Parties	13 October 1978	
B. Examination of the merits		
Commission's deliberations and decisions concerning Parties' submissions and friendly settlement	10 October 1978	MM. J.E.S. Fawcett, President G. Sperduti E. Busuttil B. Daver T. Opsahl C.H.F. Polak J.A. Frowein G. Jőrundsson R.J. Dupuy G. Tenekides S. Trechsel B. Kiernan N. Klecker
Applicant Government requests extension of time-limit for observations on the merits	6 December 1978	

/...

Item	Date	Note
Commission's deliberations and decision to extend time-limit as requested	9 December 1978	MM. J.E.S. Fawcett, President G. Sperduti C.A. Nørgaard F. Ermacora E. Busuttil B. Daver T. Opsahl C.H.F. Polak J.A. Frowein G. Tenekides S. Trechsel B. Kiernan N. Klecker M. Melchior
Applicant Government requests further extension of time-limit	8 January 1979	
President's Order extending time-limit as requested	9 January 1979	Mr Fawcett
Submission of applicant Government's observations	17 January 1979	
Respondent Government requests extension of time-limit for observations in reply	19 March 1979	
President's Order extending time-limit as requested	19 March 1979	Mr Fawcett
Receipt of respondent Government's communication of 9 May 1979	11 May 1979	
Receipt of applicant Government's communication of 2 August 1979	13 August 1979	
Commission's deliberations	4 October 1979	MM. J.E.S. Fawcett, President G. Sperduti C.A. Nørgaard F. Ermacora M.A. Triantafyllides E. Busuttil L. Kellberg B. Daver C.H.F. Polak G. Jörundsson G. Tenekides S. Trechsel B. Kiernan N. Klecker M. Melchior J. Sampaio

/...

Item	Date	Note
Commission's deliberations and decisions concerning future procedure	8 October 1979	MM. J.E.S. Fawcett, President G. Sperduti C.A. Nørgaard F. Ermacora M.A. Triantafyllides E. Busuttil L. Kellberg B. Daver C.H.F. Polak J.A. Frowein G. Jörundsson R.J. Dupuy G. Tenekides B. Kiernan N. Klecker M. Melchior J. Sampaio
Respondent Government requests extension of time-limit for submission of suggestions on further procedure	20 November 1979	
Receipt of communication from applicant Government	21 November 1983	
President's Order extending time-limit for respondent Government	23 November 1979	Mr Fawcett
Commission's deliberations and decisions on future procedure	5 December 1979	MM. J.E.S. Fawcett, President G. Sperduti C.A. Nørgaard L. Kellberg B. Daver T. Opsahl C.H.F. Polak J.A. Frowein G. Tenekides S. Trechsel B. Kiernan M. Melchior
Receipt of communication from respondent Government	28 December 1979	
Receipt of communication from applicant Government	28 December 1979	
Receipt of communication from applicant Government	12 February 1980	

Item	Date	Note
Commission's deliberations	6 March 1980	MM. J.E.S. Fawcett,President G. Sperduti C.A. Nørgaard L. Kellberg B. Daver C.H.F. Polak J.A. Frowein G. Jőrundsson R.J. Dupuy G. Tenekides S. Trechsel B. Kiernan N. Klecker M. Melchior J. Sampaio J.A. Carrillo
Receipt of supplementary material from applicant Government	5 May 1980	
Commission's deliberations concerning an Interim Report	13 May 1980 (morning)	MM. J.E.S. Fawcett, President G. Sperduti C.A. Nørgaard E. Busuttil B. Daver T. Opsahl C.H.F. Polak J.A. Frowein G. Jőrundsson R.J. Dupuy G. Tenekides S. Trechsel B. Kiernan N. Klecker M. Melchior J.A. Carrillo
Commission's deliberations concerning Interim Report continued	13 May 1980 (afternoon)	MM. G. Sperduti,Acting President C.A. Nørgaard E. Busuttil B. Daver T. Opsahl C.H.F. Polak J.A. Frowein G. Jőrundsson R.J. Dupuy G. Tenekides S. Trechsel B. Kiernan N. Klecker M. Melchior J.A. Carrillo

Item	Date	Note
Communication from applicant Government	25 June 1980	
Communication from respondent Government	25 June 1980	
Commission's deliberations on Interim Report	11 July 1980	MM. J.E.S. Fawcett, President G. Sperduti C.A. Nørgaard F. Ermacora M.A. Triantafyllides E. Busuttil L. Kellberg B. Daver T. Opsahl C.H.F. Polak J.A. Frowein R.J. Dupuy G. Tenekides S. Trechsel B. Kiernan N. Klecker J. Sampaio J.A. Carrillo
Continued deliberations of the Commission and adoption of Interim Report	12 July 1980	MM. J.E.S. Fawcett, President G. Sperduti C.A. Nørgaard F. Ermacora M.A. Triantafyllides E. Busuttil L. Kellberg B. Daver T. Opsahl C.H.F. Polak J.A. Frowein R.J. Dupuy G. Tenekides S. Trechsel B. Kiernan N. Klecker J. Sampaio J.A. Carrillo

/...

Item	Date	Note
Commission's deliberations	14 July 1980	MM. J.E.S. Fawcett, President G. Sperduti C.A. Nørgaard F. Ermacora M.A. Triantafyllides E. Busuttil B. Daver C.H.F. Polak J.A. Frowein R.J. Dupuy G. Tenekides S. Trechsel B. Kiernan N. Klecker J. Sampaio J.A. Carrillo
Transmission of Interim Report to Committee of Ministers	3 September 1980	
Commission's deliberations	10 October 1980	MM. J.E.S. Fawcett, President G. Sperduti C.A. Nørgaard F. Ermacora E. Busuttil L. Kellberg B. Daver T. Opsahl C.H.F. Polak J.A. Frowein G. Jörundsson G. Tenekides S. Trechsel B. Kiernan N. Klecker M. Melchior
Letter from Chairman of Ministers' Deputies	4 December 1980	Transmitting text of decision of Committee of Ministers (adopted at the 326th meeting of the Deputies)

Item	Date	Note
Commission's deliberations and decision again to invite respondent Government's observations on the merits	12 December 1980	MM. J.E.S. Fawcett, President G. Sperduti C.A. Nørgaard E. Busuttil B. Daver T. Opsahl C.H.F. Polak J.A. Frowein G. Jörundsson G. Tenekides S. Trechsel B. Kiernan N. Klecker M. Melchior J. Sampaio J.A. Carrillo
Delegation's deliberations	18 December 1980	MM. J.E.S. Fawcett F. Ermacora J.A. Frowein G. Jörundsson J.A. Carrillo
Communication from respondent Government	27 February 1981	
Commission's deliberations and decisions concerning further procedure	16 and 17 March 1981	MM. J.E.S. Fawcett, President G. Sperduti C.A. Nørgaard F. Ermacora (on 16.3) M.A. Triantafyllides E. Busuttil L. Kellberg B. Daver J.A. Frowein G. Jörundsson G. Tenekides S. Trechsel B. Kiernan N. Klecker M. Melchior J.A. Carrillo
President's letter to Chairman of Ministers' Deputies	18 March 1981	Mr Fawcett

/...

Item	Date	Note
Applicant Government requests extension of time-limits for further submissions	29 April 1981	
Commission's deliberations and decision to extend time-limits as requested	14 May 1981	MM. J.E.S. Fawcett, President C.A. Nørgaard E. Busuttil B. Daver T. Opsahl J.A. Frowein G. Tenekides B. Kiernan M. Melchior J.A. Carrillo
Receipt of applicant Government's further submissions of 24 July 1981	28 July 1981	
Communication from applicant Government	30 September 1981	
Commission's deliberations and decisions on procedure	7 October 1981	MM. C.A. Nørgaard, President G. Sperduti J.A. Frowein J.E.S. Fawcett M.A. Triantafyllides E. Busuttil L. Kellberg B. Daver T. Opsahl G. Jörundsson G. Tenekides S. Trechsel B. Kiernan M. Melchior J. Sampaio J.A. Carrillo A. Weitzel J.C. Soyer
Communication from applicant Government	5 December 1981	
Meeting with representatives of applicant Government	14 December 1981	MM. C.A. Nørgaard J.A. Frowein Applicant Government MM. Loucaides Papademas Ioakim Varoshiotis

Item	Date	Note
Submissions by applicant Government concerning missing persons	22 January 1982	
Receipt of applicant Government's submissions of 8 February 1982	17 February 1982	
Further submission by applicant Government	5 March 1982	
Commission's deliberations and decision to investigate the complaint concerning missing persons	8 March 1982	MM. C.A. Nørgaard, President J.A. Frowein F. Ermacora J.E.S. Fawcett M.A. Triantafyllides E. Busuttil L. Kellberg B. Daver G. Jōrundsson G. Tenekides S. Trechsel B. Kiernan M. Melchior J. Sampaio J.A. Carrillo A. Weitzel J.C. Soyer H.G. Schermers
Communication from applicant Government	30 March 1982	
Letter from applicant Government	8 April 1982	
Receipt of letter of 22 April 1982 from respondent Government	3 May 1982	
Delegation's deliberations	13 May 1982	MM. J.A. Frowein F. Ermacora M. Melchior J.A. Carrillo
Delegation's deliberations	8 July 1982	MM. J.A. Frowein F. Ermacora M. Melchior J.A. Carrillo

Item	Date	Note
Letter from applicant Government proposing a further witness	9 August 1982	
Order by Principal Delegate that witness should be heard	18 August 1982	Mr J.A. Frowein
Receipt of applicant Government's letter of 17 September 1982	20 September 1982	
Hearing of witnesses concerning missing persons	20 September 1982	MM. J.A. Frowein F. Ermacora M. Melchior J.A. Carrillo
Commission's deliberations and decisions on future procedure	6 October 1982	MM. C.A. Nørgaard, President J.A. Frowein J.E.S. Fawcett M.A. Triantafyllides T. Opsahl G. Jörundsson G. Tenekides S. Trechsel B. Kiernan M. Melchior J. Sampaio A. Weitzel H.G. Schermers
Applicant Government requests extension of time-limit for final written submissions	21 January 1983	
Commission's deliberations and decision to extend time-limit as requested	28 January 1983	MM. C.A. Nørgaard, President G. Sperduti J.A. Frowein F. Ermacora J.E.S. Fawcett E. Busuttil G. Jörundsson G. Tenekides S. Trechsel B. Kiernan M. Melchior J. Sampaio J.A. Carrillo A.S. Gözubuyuk A. Weitzel H.G. Schermers

Item	Date	Note
Letter from respondent Government	28 January 1983	
Communication from applicant Government	10 February 1983	
Receipt of applicant Government's final written submissions	14 February 1983	
Commission's deliberations	28 February 1983	MM. C.A. Nørgaard, President G. Sperduti J.A. Frowein T. Opsahl G. Tenekides S. Trechsel B. Kiernan M. Melchior J. Sampaio A. Weitzel H.G. Schermers
Hearing on the merits; Commission's deliberations	7 March 1983	MM. C.A. Nørgaard, President G. Sperduti J.A. Frowein F. Ermacora J.E.S. Fawcett M.A. Triantafyllides E. Busuttil L. Kellberg B. Daver G. Jörundsson G. Tenekides S. Trechsel B. Kiernan M. Melchior J. Sampaio J.A. Carrillo A. Weitzel J.C. Soyer H.G. Schermers _Applicant Government_ MM. L.G. Loucaides, Agent C.G. Tornaritis C. Papademas I. Brownlie G. Cohen Jonathan Mrs C. Palley _Respondent Government_ not represented

/...

Item	Date	Note
Commission's deliberations (consideration of draft Art 31 Report)	11 - 13 July 1983	MM. C.A. Nørgaard, President G. Sperduti J.A. Frowein F. Ermacora J.E.S. Fawcett M.A. Triantafyllides E. Busuttil L. Kellberg B. Daver G. Jörundsson G. Tenekides S. Trechsel B. Kiernan J. Sampaio A. Weitzel J.C. Soyer H.G. Schermers
Commission's deliberations (adoption of Art 31 Report)	4 October 1983	

/...

APPENDIX II

DECISION OF THE COMMISSION

AS TO THE ADMISSIBILITY

of Application No. 8007/77

by Cyprus against Turkey

The European Commission of Human Rights sitting in private on 10 July 1978, the following members being present:

MM. J. E. S. FAWCETT, President
G. SPERDUTI, First Vice-President
C. A. NØRGAARD, Second Vice-President
M. A. TRIANTAFYLLIDES
L. KELLBERG
B. DAVER
T. OPSAHL
R. J. DUPUY
G. TENEKIDES
S. TRECHSEL
B. J. KIERNAN
N. KLECKER

Mr. H. C. KRÜGER, Secretary to the Commission

Having regard to Art. 24 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 6 September 1977 by the Government of Cyprus against the Government of Turkey and registered on the same day under file No. 8007/77;

Having regard to the President's order of 7 September 1977 that notice of the application should be given to the Government of Turkey and that the Government should be invited to submit before 4 November 1977 their observations in writing on the admissibility of the application;

/...

Having regard to the applicant Government's supplementary letter of 8 September 1977;

Having regard to the Commission's decisions of 5 October 1977:

- that the applicant Government should be invited to submit further particulars of the application within a period of three weeks expiring on 26 October 1977; and

- that the time-limit for the submission of the respondent Government's observations should, if the Government so requested, be extended to 25 November 1975;

Having regard to the President's order of 20 October 1977:

- that the time-limit for the submission of particulars should, as requested by the applicant Government on 19 October, be extended to 5 November 1977; and

- that the time-limit for the submission of observations by the respondent Government should, if the Government so requested, be correspondingly extended to 5 December 1977;

Having regard to the applicant Government's "Particulars of the Application" dated 1 November which were filed on 4 November 1977;

Having regard to the respondent Government's letter of 15 November 1977;

Having regard to the President's order of 16 November 1977 extending to 5 December 1977 the time-limit for the submission of the respondent Government's observations;

Having regard to the respondent Government's request of 1 December 1977 for a further extension of the time-limit until 13 January 1978;

Having regard to:

- the President's order of 5 December 1977 provisionally extending the said time-limit until such time as the Commission had decided;

/...

- the Commission's decision of 7 December 1977 extending the time-limit to 13 January 1978;

Having regard to the respondent Government's observations of 11 January 1978 on the admissibility of the application which were filed on 14 January 1978;

Having regard to the President's order of 16 January that the applicant Government should be invited to submit their observations in reply before 18 February 1978;

Having regard to the President's order of 15 February that the said time-limit should, as requested by the applicant Government on 14 February, be extended to 6 March 1978;

Having regard to the applicant Government's observations of 27 February on the admissibility of the application which were filed on 3 March 1978;

Having regard to:

- the Commission's decision of 7 March that a hearing of the Parties on the admissibility of the application should be held during its session in July 1978;

- the President's order of 17 March fixing 5 and 6 July 1978 as dates for this hearing;

Having regard to the oral sugmissions made by the Parties at the hearing before the Commission on 5, 6 and 7 July 1978 (1);

Having regard to the report provided for in Rule 39 para. (2) of the Rules of Procedure of the Commission;

Having deliberated on 7 and 10 July 1978;

Decides as follows:

---

(1) A list of the Parties' representatives at this hearing is given in the Annex to this decision.

THE FACTS

I. The application

1. Original submissions

On 6 September 1977 the applicant Government submitted the application to the Commission in the following terms:

"The Republic of Cyprus, Member State of the Council of Europe and High Contracting Party to the European Convention on Human Rights and additional Protocols thereto requests under Art. 24 of the European Convention on Human Rights the Secretary General of the Council of Europe to refer to the Commission of Human Rights the following breaches of provisions of the Convention and First Protocol, committed by the Republic of Turkey, Member State of the Council of Europe and High Contracting Party to the European Convention on Human Rights and additional Protocols thereto.

The Republic of Cyprus contends that the Republic of Turkey continues to commit, since 18 May 1976 when the Commission of Human Rights adopted its Report in respect of Applications Nos 6780/74 and 6950/75 for violation of human rights by Turkey in the areas occupied by the Turkish army in Cyprus, breaches of Arts. 1, 2, 3, 4, 5, 6, 8, 13 and 17 of the Convention (1) and Arts. 1 and 2 of the First Protocol and of Art. 14 of the Convention in conjunction with all the afore-mentioned Articles.

Turkey continues to occupy 40 p.c. of the territory of the Republic of Cyprus seized in consequence of the invasion of Cyprus by Turkish troops on 20 July 1974 (see the area in red colour of the map attached as Appendix A).

In the said Turkish occupied area the following violations of human rights continue to be committed by way of systematic conduct by Turkish state organs, in utter disregard of the obligations of Turkey under the European Convention of Human Rights, ever since the adoption of the afore-said Report by the Commission:

---

(1) The reference to Art. 2 was added by letter of 8 September 1977.

(a) Detention or murder of about 2,000 missing Greek Cypriots (a considerable number of them being civilians) who were last seen alive in the Turkish occupied areas of Cyprus after the invasion and in respect of whom the Turkish Authorities refuse to account or co-operate and accept suggested procedures for the tracing of them through international humanitarian organisations such as the ICRC.

(b) Displacement of persons from their homes and land. Turkey continues to refuse to allow the return to their homes in the Turkish occupied area of Cyprus of more than 170,000 Greek Cypriot refugees. Instead, Turkey continued to force through inhuman methods the remaining Greek Cypriot inhabitants of the said region to leave their homes and seek refuge in the government controlled area. They, like the rest of the refugees, are still prevented by Turkey to return to their homes.

The homes and properties of the Greek Cypriot refugees continued to be distributed amongst the Turkish Cypriots who were shifted into the Turkish occupied area as well as amongst many Turks illegally brought from Turkey in an attempt to change the demographic pattern in the Island. This distribution is now being intensified in respect of the Famagusta area.

(c) Many families were and still are separated as a result of the said measures of displacement.

(d) Looting of appreciable quantities of commercial commodities and other movable properties from Greek Cypriot owned business, houses and other premises especially in the Famagusta area.

(e) Robbery of the agricultural produce, livestock, stocks in commercial and industrial enterprises and other movables belonging to the Greek Cypriots. The agricultural produce belonging to Greek Cypriots continues to be collected and exported directly or indirectly to markets in several European countries. Nothing belonging to the Greek Cypriots in the occupied area has been returned and no move is being made for such return.

(f) Seizure, appropriation, exploitation, occupation and distribution of land, houses, enterprises and industries belonging to Greek Cypriots on an organised and permanent basis.

(g) Wanton destruction of properties belonging to Greek Cypriots.

No military operation or any fighting whatsoever has taken place during the period in respect of which the present application relates.

The afore-mentioned criminal acts were directed against Greek Cypriots because of their ethnic origin, race and religion. The object was to eradicate the Greek-Cypriot population of the Turkish occupied area which constituted the vast majority of the inhabitants of those areas, and supplant them with Turks, thus creating, by artificial means, a Turkish populated area in furtherance of Turkey's policy for the formation of the so-called 'Turkish-Cypriot Federated State of Cyprus'.

The bulk of the Greek-Cypriot population, having been forced by the Turkish troops through various systematic acts of violence to leave those areas and having been prevented until now to return thereto, Turkey had no need to continue engaging in atrocities against the remaining Greek-Cypriot inhabitants of such areas on such big scale and with the same ferocity as during the first year after the invasion.

No remedy in the Turkish Courts was under the circumstances likely to be effective and adequate for the atrocities and crimes in question. In any case, all the above atrocities and crimes were committed under such circumstances which excuse the failure to resort to any domestic remedy for the purposes of Art. 26 of the Convention.

The situation resulting from Turkey's occupation of the areas in question continues to affect also the rights and freedoms of the Turkish Cypriots in those areas and in particular those who, in furtherance of Turkey's political aims, were shifted thereto from the southern part of Cyprus where they have their homes and properties.

All the above violations of human rights can be proved by concrete and positive evidence.

Further particulars of the above violations of human rights including statements by witnesses will be made available as soon as possible.

It should be mentioned that it was not possible until now to ascertain in full the magnitude of the violations of human rights which continue to be committed by Turkey in the Turkish occupied areas as these areas are still sealed off and the Turkish military authorities do not allow free access to them, even to UNFICYP and humanitarian organisations.

The Government of the Republic of Cyprus requests the Commisison to give precedence to the present application under Rule 28 of the Rules of Procedure of the Commission of Human Rights in view of the extent and continuing nature of the violations complained of."

/

2. Particulars of the application

On 4 November 1977 the applicant Government submitted a document entitled "Particulars of the Application" which deals with the following subjects:

(a) Control and authority of Turkey over the areas where violations are alleged to have been committed

The applicant Government submitted that, ever since 18 May 1976 when the Commission concluded its examination of submissions and evidence in Applications Nos 6780/74 and 6950/75, "Turkey continues to occupy through her armed forces and exercise actual and exclusive authority and control over the areas of Northern Cyprus seized in consequence of the invasion of Cyprus by Turkish troops on 20 July 1974." All persons and properties in the said areas "have been throughout the period 18 May 1976 to date 'within the jurisdiction' of Turkey in the sense of Art. 1 of the Convention". The Republic of Cyprus "has been prevented from exercising any form of control, power of authority in respect of those areas, which continue to be sealed off".

According to the applicant Government, Turkey keeps the area under her control "through the maintenance of a large force of about 30,000 troops with about 150 tanks and 80 armoured vehicles. The Turkish troops have established and continue to maintain fortifications and minefields throughout the demarcation line between the Turkish occupied area and the Government controlled area. No movement is allowed by the Turkish troops to and from the occupied region either by Greek Cypriots or by Turkish Cypriots."

The Turkish troops in the area, "which consist of two Regular Divisions with all auxiliary units plus special parachute units and commandos and air and naval units, are spread all over this area in various military camps. Columns of Turkish troops are constantly patrolling the occupied territory and they maintain check-points on main lines of communication in the same area." "Restrictions of movements are imposed on the population within the Turkish occupied area, such restrictions being more severe and amounting in substance to a confinement in their village, in respect of the remaining Greek-Cypriot population."

The applicant Government further submitted that the "so-called Turkish-Cypriot Administration or 'Turkish Cypriot Federated State' are subject to the authority and directions of the Turkish Government. Any 'authority' exercised by the so-called TCFS is in actual fact derived from the strength of the Turkish army, to which it is subordinate and expresses the will and the policy of Turkey ....(A)part from the overall control and supervision of the policy

/...

and functions of the so-called TCFS by the Turkish Government, the decisions of the so-called Turkish-Cypriot Administration are subject to the approval of the so-called Co-Ordination Committee in which the Commander of the Turkish Forces in Cyprus, the Turkish Brigadier in charge of the administration of the 'Turkish-Cypriot Security Forces' and the Turkish Ambassador participate and which receives orders and obtains directives from the Turkish Government." The "so-called Turkish-Cypriot security forces (army and police) are under the authority and subject to the orders of the General Staff of the Turkish army. The Commander of the 'Security Forces' in question is a Turkish Brigadier from Turkey, appointed by and accountable to the said General Staff. The officers of the 'Security Forces' are as a rule officers of the Turkish army. All the expenses for the maintenance of the Turkish-Cypriot 'Security Forces' are provided by Turkey."

Turkey's "actual authority and control over the occupied area" is in the applicant Government's view "also illustrated by the fact that the very solution of the Cyprus problem, which is interwoven with the exercise of the authority in the occupied areas, rests with the Turkish Government. This was clearly stated on several occasions by the Turkish Prime Ministers." The applicant Government referred in this connection to statements which, according to the Government, were made by Prime Minister Demirel in April, May, July, August and October 1977, by Prime Minister Ecerit in July 1977, by Deputy Prime Minister Erbakan in February and April 1977 and by "the Turkish-Cypriot leader Mr R. Denktash" on several occasions, in particular on 20 July 1977.

The applicant Government stated in conclusion that, throughout the period covered by the application, Turkey " has continued to extend its own state facilities and services in respect of the Turkish occupied areas in Cyprus."

(b) Violations complained of - general

According to the applicant Government, the alleged violations were "committed in the occupied areas by Turkey through its armed forces or other organs agents or persons acting in the exercise of authority and power given to them by Turkey or derived from the Turkish occupying forces. In any case responsibility for the violations complained of should be imputed to Turkey on the basis of the fact of her having effective military occupation and control of the areas in question, and the fact that such violations are, in the light of the above and on the basis of the evidence to be presented to the Commission, the result of the administration carried out in those areas in consequence of such occupation and control."

(c) Missing persons

According to the applicant Government, about "2,000 Greek Cypriots (a considerable number of them being civilians) who were last seen alive in the occupied areas of Cyprus after the invasion and who were brought under the actual authority and responsibility of the Turkish army in the course of the aforesaid military action or during the military occupation of the north of Cyprus are still missing. Turkey continues to prevent through its forces the carrying out of investigations in the said areas and in Turkey by international humanitarian organisations such as the International Committee of the Red Cross concerning the fate of these persons. This continuing negative attitude of Turkey on a purely humanitarian problem coupled with indisputable evidence that many missing persons were arrested, after the fighting was over, by the Turkish army or armed Turks acting under the directions of the Turkish army, and detained in prisons in Turkey or in Cyprus, is only compatible with the responsibility of Turkey for violations of Arts. 2 or 4 and in any case Art. 5 of the Convention in respect of all the missing persons in question."

For further particulars the Government referred to a document entitled "The Case of the Missing Cypriots"(Appendix B). It added that "Turkey in various International fora, e.g. Third Committee of UN General Assembly (meeting of 24 November 1976), continued to decline proposals of the Cyprus Government for investigations by an independent body for the tracing of the missing persons in question." The Government referred in this connection to various reports of the UN Secretary-General.

(d) Displacement of persons

The applicant Government submitted that Turkey's refusal "to allow the return to their homes in the Turkish occupied area of Cyprus of about 200,000 Greek Cypriot refugees" (1) continued in the form of:

- "voting against the Resolution of the UN General Assembly demanding the urgent implementation of previous Resolutions calling for the return of all refugees to their homes in safety (Res. 31/12 (1976) of 16 November 1976)";

---

(1) Data concerning the refugees were given in Appendix C.

- "refusal to comply with new Resolutions of the UN General Assembly and the Security Council calling for 'urgent measures to facilitate the voluntary return of all refugees to their homes in safety and to settle all other aspects of the refugees problem'" (1);

- "official declarations against the return of the Greek Cypriot refugees to the north" (2).

According to the applicant Government, Turkey continued "during the period 18 May 1976 to date" to "force through inhuman methods the remaining Greek Cypriot inhabitants of the occupied area of Cyprus to leave their homes and seek refuge in the government controlled areas." About "6,000 Greek Cypriots were forcibly expelled from the occupied areas. The victims of these expulsions were forced either by the use of arms or by inhuman conditions of life imposed on them by the Turkish military authorities such as ill-treatment, restrictions of movement, deprivation of their means of livelihood, detention, denial of education, insufficient medical treatment etc. to sign applications for their transfer to the government controlled area. They were then forced to leave the occupied areas on the pretext that they themselves chose to do so."

The applicant Government stated that the Turkish authorities used the following methods "to force the Greek Cypriot inhabitants of the Turkish occupied areas to sign the so-called voluntary application":

- "curfew from 20 hours to 6 hours";

- "the enclaved Greek Cypriots have not been allowed to move out of their villages, unless they obtained special written permission from the Turkish authorities, which is given very rarely. Also they are not allowed to go freely to their fields and graze their animals and in any case they have not been allowed to move from one village to another";

- "Greek Cypriot doctors have not been allowed to visit the enclaved Greek Cypriots and the medical treatment afforded to the latter is completely insufficient";

---

(1) The Government mentioned the above Resolution of the General Assembly and Resolutions 391, 401, 410 and 414 of the Security Council.

(2) In this respect the Government referred to the statements of Prime Ministers Demirel and Ecevit and Deputy Prime Minister Erbakan mentioned on p.86 above.

- "the Greek Cypriots have been forbidden to talk or communicate in any way with members of the UNFICYP - who themselves are closely watched by the Turks - except in the presence of a Turk. Those who fail to comply with such measure, are arrested and severely beaten. Also no free communication was allowed between the enclaved Greek Cypriots and the members of the ICRC so long as such members were visiting the occupied area, i.e. up to May 1977. No communication has been allowed between the enclaved Greek Cypriots and their relatives in the government controlled area except by means of messages sent through the ICRC censored by the Turkish Military Authorities and very often destroyed by the latter before they reached their destination";

- "the Greek Cypriots have not been allowed to transact freely commercial transactions or carry on any profession, trade or business in the occupied area. Consequently for their living they depend mainly on the social welfare benefits, food supplies, financial aid and other support sent to them weekly by the Cyprus Government through UNFICYP";

- "the enclaved Greek Cypriots have been threatened on several occasions that if they did not sign 'voluntary applications' for their immediate transportation to the government controlled areas, they would be taken to another area to live in tents. Other threats .... are the following: 'If you do not sign you will join the ranks of the missing'; 'if you do not sign you will be killed'; 'if you do not sign you will in any case be removed and put to prison in another area'; 'if you do not sign nobody could guarantee your safety'";

- "Greek Cypriot teachers have not been allowed to go and render their services in the occupied area. In fact the functioning of the Greek Cypriot elementary schools has been inadequate, all Greek Cypriot secondary schools have been closed and the equipment of many of them such as books, writing material and various instruments has been confiscated by the Turks. Consequently those Greek Cypriots in need of education are forced to leave the Turkish occupied areas so as to attend schools functioning in the government controlled areas";

- "there have been many cases of all forms of direct physical violence used against Greek Cypriots. In fact they live continually in terror as a consequence of such violence, which includes: breaking into Greek Cypriot homes and robbing the occupants; savage beatings; detention and other forms of physical ill-treatment. There have been also many cases of psychological pressure such as repeated knocking on doors, firing in the air and stoning houses during night time. Also there have been cases of compulsory cultivation and harvesting of fields, etc.".

The applicant Government observed that the "victims of the above expulsions include persons of both sexes and of all ages and .... like the rest of the refugees they are still prevented to return to their homes in the north." According to the Government, the "Greek Cypriot population in the occupied area is now about 1,890. They continue to be the victims of the above inhuman conditions of life and this is supported by the recent report of the UN Secretary-General dated 7 June 1977 (paras. 20, 23, 24, 25 and 26) (which) points out that 'although the living conditions of these people have slightly improved they are still a cause for concern'."

(e) "Colonisation"

The applicant Government submitted that the "homes and properties of the Greek Cypriot refugees in the Turkish occupied area have continued to be distributed amongst the Turkish Cypriots who were shifted from the south as well as amongst many Turks illegally brought from Turkey in an attempt to change the demographic pattern of the Island."

"Turkey in furtherance of her policy for the colonization of the occupied area of Cyprus and the alteration of the racial balance of the Island has continued to promote the settlement of thousands of mainland Turks in the said area. It is estimated that the number of the mainland Turks who have settled in the occupied region has by now risen to over 50,000 in addition to the members of the Turkish army who are still present in the island .... These settlers are given the status of 'Turkish Cypriot citizens' under the so called Citizenship of the Autonomous Turkish Administration Law of 25 February 1975. The settlers were even given the right to elect and be elected and as a consequence they participated in the elections of the 'local authorities' in May 1976 and the 'Parliamentary Elections' of June 1976 in the Turkish occupied areas."

"In many occupied villages which are now inhabited exclusively by Turkish settlers the 'local authorities' are composed exclusively of such settlers. In other villages inhabited by Turkish Cypriots and Turkish settlers the 'local authorities' are composed of both of them" (1).

"Land belonging to the Greek Cypriots is allotted to the settlers for cultivation. But in most cases they arbitrarily take possession of the surrounding land whether it belongs to Greek

---

(1) The Government referred to Appendix D (list of towns and villages where mainland Turks have settled) and mentioned Gaidouras, Marathovouno, Akanthou, Massari, Nikitas and Ayios Mamas of Morphou as villages where the "local authorities" are composed of both Turkish Cypriots and Turkish settlers.

Cypriots or to Turkish Cypriots. This course of action has caused great dissatisfaction amongst the Turkish Cypriots as a result of which the Turkish Administration decided to pay a monthly allowance to those of the Turkish Cypriots who were deprived of their land by the settlers. Furthermore the Turkish settlers collect the crop and the agricultural produce of both Greek Cypriots and Turkish Cypriots. In spite of the many problems and complaints of the Turkish Cypriots the arbitrary acts of the settlers continue because they enjoy a privileged treatment by the Turkish armed forces. The settlers also engage in many other criminal activities and acts of oppression against the population in the Turkish occupied area. These acts and the very presence in the Turkish occupied area of the settlers in question have been the subject of severe criticism by some Turkish Cypriot politicians such as the ex Vice-President of the Republic Dr Kutchuk. The acts of violence and oppression on the part of the settlers in question are particularly grave and systematic when directed against the Greek Cypriot population in the said areas."

With regard to the "systematic settlement of Turks from mainland in the occupied areas during the period May 1976 to date", the Government refer to "statements made by eye witnesses who were forced to come to the government controlled area", to "statements by Turkish Cypriots appearing in the Turkish Cypriot press" and to "other evidence from independent sources", e.g. an article by Senator Edward Kennedy, published in the "Hellenic Chronicle" of 9 September 1976 under the title "Tilt towards Turkey continues", and an article in the English newspaper "The Guardian" of 30 August 1978 entitled "Words won't shift Turkey".

According to the applicant Government, violent incidents took place between the Turkish settlers and the Turkish Cypriots on several occasions during which a number of persons on both sides were killed or wounded. The Turkish army on all such occasions intervened and imposed a curfew.

The applicant Government further stated that "colonization of the Turkish occupied part of Cyprus by Turkey has during the last few months commenced to cover the area of Famagusta. As a consequence the Cyprus Government has raised the question before the UN Security Council which on 15 September 1977 adopted a resolution expressing concern at the situation caused by such development" (1). The Government complained that, even after this resolution, "Turkey maintained the same policy regarding the colonisation of Famagusta". The Government quoted Mr Chaglayiakil, the Turkish Foreign Minister, as having made a statement to this effect on 15 October 1977. "Few days earlier Mr Chaglayiakil underlined the authority of Turkey over the occupied areas in Cyprus by emphasizing the fact that Turkish Cypriots cannot without the authority of the Turkish Government 'draw the boundary line in such and a way' in the north of Cyprus."

---

(1) The Government here referred to the statement of the Secretary General before the Security Council of 1 September 1977 (Appendix E).

Referring to statements of members of the Turkish Government (1) the applicant Government generally complained that the "continuing operation of colonization of the north part of Cyprus by Turkey is being carried out in utter disregard of the provisions of the UN Resolution 3395 (1975) by which all parties were urged to refrain from unilateral actions including changes in the demographic structure of Cyprus, and which was reaffirmed by the subsequent Res. 31/12/1976 (16 November 1976)".

(f) Separation of families

The applicant Government complained that by "the above measures of displacement a substantial number of families continue to be separated; many Greek Cypriots who were forced by Turkey to leave their families in the occupied areas and come to the Government controlled areas are not allowed by the Turkish forces to return to or even visit their families in those areas."

(g) Looting

According to the applicant Government, looting "by or with the support of the Turkish troops of appreciable quantities of commercial commodities and other movable properties from Greek Cypriot owned businesses, houses and other premises in the Turkish occupied areas, especially in the Famagusta area has continued. This is confirmed by independent sources" (2). According to the Government, incidents of looting of Greek Cypriot premises, by Turkish troops or persons acting with their authority or support, occurred also "in various other places of the occupied region as for example in the village of Petra Solia and in the area South East of Aglantzia (iron, timber, machinery, etc.)."

---

(1) Cf. p. 86 above.

(2) The Government referred to "the UN Secretary General's reports S/12093 (5.6.76) par. 32 p. 12, S/12253 (9.12.76) par. 47 p. 14 and S/12342 (7.6.77) par. 30 p. 9" and the "secret UN Reports published in the British Newspaper 'The Times' of 13 December 1976".

As examples for the looting of churches the applicant Government mentioned the Greek Orthodox Church of the village of Vathylaka, the church of Ayia Anna of Koma-tou-Yialou, Apsidiotissa of Sichari Village, the following churches transformed into mosques: Apostolos Andreas of Neapolis, church of Virgin at Katokopia, the churches of Lefkoniko and Eptakomi, and the "church of Ayios Mamas whose desecration still continues".

(h) Robbery of the agricultural produce, livestock, stocks in commercial and industrial enterprises and other movables belonging to Greek Cypriots

The applicant Government submitted that the "agricultural produce such as citrus, cereals, olives, potatoes, tobacco, carrots, carobs etc. belonging to the Greek Cypriot refugees has continued to be collected by or with the authority or support of the Turkish army for the benefit of the Turks and transported by Turkish and other vessels and offered to markets in several European countries especially in the UK" (1). Regarding the extent of the said agricultural produce reference was made to "the evidence produced before the Commission during the examination of Applications Nos 6780/74 and 6950/75".

According to the applicant Government, the "livestock belonging to Greek Cypriots, worth millions of pounds, that was cut off in the occupied areas and appropriated by the Turkish troops or Turks acting with the authority or support of such troops as per the above Applications, continued to be the subject of exploitation for the benefit of the Turks. The Greek Cypriot owners thereof are being prevented from taking possession of them, and no part of the profits resulting from their exploitation or any other compensation whatsoever is paid to them."

"Stocks in commercial and industrial enterprises and other movables in the occupied region belonging to Greek Cypriots have continued to be the subject of robbery by the Turkish army and by persons acting with the authority and support of this army. Many new incidents of such robberies occurred during the period covered by the present Application. Such incidents relate to robberies of enormous quantities of ore transported to Turkey by Turkish vessels, great quantities of pipes worth over £1,000,000, from factories and stores in Famagusta and Morphou exported to Libya; machinery and stocks in stores from storehouses in the area of Aglantzia and Famagusta; agricultural equipment and motor vehicles" (2).

---

(1) The Government referred to an article in "The Times" of 15 June 1977 entitled "British Help for Economy of Turkish Cyprus".

(2) The Government stated that, on 3 September 1977, "the following Greek Cypriot owned vehicles were sold by the Turkish Administration by auction: ER712, DT646, FR554, CE840, CG251, CM742, BM194, TED003. In June 1977 motor vehicles DC702 and CY103 belonging to Greek Cypriots were also sold by auction."

The applicant Government observed in conclusion that the "Greek Cypriot owners of agricultural land and enterprises are being prevented to return and enjoy their property."

(i) Seizure, appropriation, exploitation, occupation and distribution of land, houses, enterprises and industries belonging to Greek Cypriots

The applicant Government submitted that this "category of violations have continued to be committed on an organised and permanent basis with the approval, encouragement and support of the Turkish state organs. The Greek Cypriot owners are still prevented by Turkey to return to their properties."

According to the Government, there "was an attempt recently to 'legalize' the distribution of the Greek Cypriot owned immovable property in the occupied areas through the enactment of a 'law' by the so-called Turkish Cypriot Legislative Assembly acting in this respect as an instrument and in accordance with the policy of the Turkish Government. This 'law' entitled 'A Law to Provide for the Housing and Distribution of Land and Property of Equal Value' was published on 16 August 1977 and amounts to actual confiscation of the said property for the benefit of Turks residing in those areas including Turks from Turkey."

"Presumably under the said law, land and citrus groves belonging to Greek Cypriots commenced to be distributed on a purported legal basis, thus indicating an intention to deprive permanently the Greek Cypriot owners of the ownership thereof. The following recent examples of such deprivation appearing in the Turkish press is given: On 24 August 1977 it was reported that on 23 August 1977 land and citrus groves (1,829 donums of irrigated land, 3,600 donums of dry land and 13,151 donums of groves) were distributed to Turks by the Turkish authorities in the Morphou area."

The applicant Government also stated that the "Cyprus Turkish Tourism Enterprises Co Ltd" which "was set up in October 1974, the major participation of which belongs to Turkish organisations such as the Turkish Pensioners Bank, the Turkish Airlines and the Turkish Maritime Bank, has continued to advertise and promote the Greek Cypriot hotels. This appears clearly from the Hotels Guides of 1976 and 1977 issued by the Turkish Administration, in which the said Tourist organisation is given as responsible for operating the Greek Cypriot owned hotels in the occupied areas, some of which are expressly named, e.g. Mare Monte, Dorana and Momoza. The address of the above organisation is given as Mersin 10, Turkey, and is managed and directed by Turks from Turkey." "The names of the other Greek Cypriot owned hotels in the said areas are also given in the above mentioned guides by which tourists are invited to spend their holidays in the occupied region, e.g. the Dome, Kyrenia Rocks, Rebecca, Bristol, Coeur de Lion, Atlantis etc."

"Turkish Tourism and Information Offices in a number of European countries have continued to advertise and promote Greek Cypriot owned hotels in the occupied part of Cyprus and Turkish officials have continued to visit that part of Cyprus in order to follow up the progress made in the efforts to operate such hotels and give the necessary instructions to the Managers of the Hotels who are Turks from mainland Turkey."

The applicant Government stated that Greek Cypriot owned hotels were operated as casinos, "as a catering institute managed by a Turk from Turkey", or as clubs for Turkish army officers. Some were occupied by the families of such officers. The Turkish Tourism and Information Office in England was "advertising the occupied area of Cyprus as part of the areas for which holidays are organised by that office".

According to the applicant Government "Greek Cypriot owned industrial units have continued to be exploited by the Turkish authorities. Some of these units have since 18 May 1976 been allotted for exploitation to individual Turkish Cypriots. For example in August 1976 four Greek Cypriot owned factories in the occupied area were allotted to Turkish Cypriots ex-employees of the Sovereign British Base Areas. Two of them are clothing factories and the other two shoe and parquet factories."

(j) Wanton destruction of properties belonging to Greek Cypriots

The applicant Government stated that, during the period 18 May 1976 to date, "various incidents of wanton destruction of properties belonging to Greek Cypriots in the occupied region by the Turkish troops or Turks acting with the authority or support of the Turkish army, occurred", e.g.:

- "in September 1976 Turkish troops demolished most of the houses of Pyrga village of Famagusta district";

- "in October 1976 orange groves in the area of Morphou were uprooted for the purpose of planting vines. The reason for that was the fact that the Turkish Cypriots shifted to the north from the south, had experience in the cultivation of vines rather than in orange groves";

- "sometime in June or July 1977 houses in the village of Afentika were destroyed with the object of taking therefrom doors, windows, electric wires and other materials in order to be used in other houses inhabited by Turkish settlers";

/...

- "Greek orthodox churches in the occupied areas have been the object not only of systematic looting (as already referred to above ...) but also of wanton destruction including arson".

(k) Absence of remedies

The applicant Government submitted that no remedy in Turkish courts "or before any authority either in the Turkish occupied areas of Cyprus or in Turkey was under the circumstances likely to be effective and adequate for the violations complained of. In any case all the violations in question have been committed under such circumstances which excuse the failure to resort to any domestic remedy for the purposes of Art. 26 of the Convention. The situation on this subject is the same as that concerning the violations complained of as per Applications Nos 6780/74 and 6950/75."

(l) Oppression of Turkish Cypriots

The applicant Government submitted that the "situation resulting from the Turkish occupation of the areas in question has continued to affect also the rights and freedoms of the Turkish Cypriots in such areas and in particular those who, in furtherance of Turkey's political aims, were shifted thereto from the southern part of Cyprus where they have their homes and properties. Indicative of the oppression of the Turkish Cypriots in the occupied areas is a statement made on 23 June 1977 by a Turkish Cypriot, who managed to come from the occupied region to the Government controlled area, that 'all Turkish Cypriots shifted from the south want to return to their homes. If freedom of movement is ever allowed by the Turkish military authorities no Turkish Cypriot will remain in the occupied region.' The Government of Cyprus will invite the Commission to visit the occupied areas and carry out investigations in respect of the oppressive measures used against the Turkish Cypriots by the Administration maintained by the Turkish occupying forces with the object of keeping control and authority over the occupied area and implementing the policy of the Turkish Government in respect thereof."

(m) Evidence

The applicant Government offered the evidence of witnesses "supporting the above violations of human rights and other evidence .... Other sources of information as to the above matters are international organisations such as the UN and the ICRC and other humanitarian organisations such as the 'ASME Humanitas'" (1).

---

(1) The Government referred to a statement by "ASME Humanitas" of 5 May 1977 (Appendix F).

(n) Restrictions of movement of UNFICYP

The Government referred to "the UN Secretary General reports Nos S/12253 of 9 December 1976 para. 42, S/12342 of 7 June 1977, para. 28, and the Resolution of the Security Council of 15 June 1977 according to which the Council is 'noting that the freedom of movement of the UNFICYP and its Civil Police is still restricted in the north of the Island'".

II. Submissions of the Parties as to the admissibility of the application

1. Written observations

(a) Respondent Government

In their observations of 11 January 1978 (1) on the admissibility of the application the respondent Government requested the Commission to declare the application inadmissible for the following reasons:

"- the Greek Cypriot Administration has no legal capacity to act as an applicant;

- Turkey has no jurisdiction over the territory of the Turkish Federated State of Cyprus;

- Application No 8007/77 is substantially the same as the applications already brought before the Commission by the Greek Cypriot Administration, Nos 6780/74 and 6950/75;

- the domestic remedies have not been exhausted and the time-limit of six months specified in Art. 26 of the Convention within which cases must be brought before the Commission has been exceeded, and

- the application is abusive."

The respondent Government also requested the Commission "to study the document containing the observations by Mr Rauf R. Denktash, the President of the Turkish Federated State of Cyprus .... which is attached to the present document as Appendix I."

---

(1) Original French. English translation by the Council of Europe.

With regard to the locus standi of the applicant Government, the respondent Government, referring to their submissions in Applications Nos 6780/74 and 6950/75, submitted that "the basic rules governing the Republic of Cyprus were determined by the Zürich and London Agreements of 1959 and the Nicosia Treaties of 1960. The Constitution of the Republic of Cyprus was drawn up as a result of these international instruments and was based on the de facto existence of two distinct communities on an equal footing. Following the bloody events resulting from the premeditated acts of violence of 1963, which were systematically perpetrated by the Greek Cypriots against the Turkish Cypriots with the aim of changing this constitutional régime by force, the equilibrium of rights and interests established between the two communities on the island was upset and the two communities were forced to live apart under separate administrations. This de facto partition took on much larger dimensions with the Sampson coup d'état aimed at achieving enosis (the union of Cyprus with Greece). In the face of this coup Turkey felt compelled to intervene in accordance with Art. 4 of the Treaty of Guarantee in order to preserve the independence and sovereignty of Cyprus and to prevent the total destruction of the island's Turkish community. At the end of the conference held in Geneva from 25 to 30 July 1974, the Foreign Ministers of Turkey, Greece and Great Britain issued a declaration in which they stressed the existence of two autonomous administrations on the island in the following terms:

> '.... The Ministers noted the existence in practice in the Republic of Cyprus of two autonomous administrations, that of the Greek Cypriot community and that of the Turkish Cypriot community ....' "

According to the respondent Government, the "proclamation on 13 February 1975 of the Turkish Federated State of Cyprus was a natural consequence of that situation. In accordance with its founders' intentions, this Federated State is intended to constitute the Turkish part of a future independent, bi-communal, federal State of Cyprus. The Constitution of the Turkish Federated State of Cyprus was approved on 8 June 1975 following a referendum in which all Turkish Cypriots of voting age took part. It is an undeniable fact that owing to the force of circumstances there are currently two governments on the island, each of which effectively has jurisdiction only over its own community and its part of the island's territory."

"The Greek Cypriot Administration, however, has put itself forward as the sole representative of the State of Cyprus and has thus attempted to live down the deliberate acts of violence which were contrary to all the principles of human rights and by which it flagrantly violated the Constitution and the treaties which form the foundations on which the State was created. This is in fact an out-and-out attempt to use the international community with a view to

/...

securing recognition of a position achieved by force. Encouraged by the unjust recognition obtained from a number of governments and international organisations despite the real situation on the island, the Greek Cypriot Administration has not hesitated for a moment to exploit the situation in order to legalise its international position vis-à-vis the European Commission of Human Rights as everywhere else by claiming to be the sole representative of the State of Cyprus to the detriment of the rights and liberties of the Turkish Cypriots."

With reference to the Commission's decision of 26 May 1975, in Applications Nos 6780/74 and 6950/75, that the applicant Government, as constituted at and since the time of lodging those applications, was "to be considered as representing the Republic of Cyprus also for proceedings under Art. 24 .... of the Convention" (Decisions and Reports 2, pp. 125, 136), the respondent Government maintained their opinion "that the Greek Cypriot Administration has no standing before the Commission either on the basis of the 1960 Constitution or by presuming on subsequent developments."

The applicant Government have "no standing on the basis of the 1960 Constitution, seeing that:

(a) the decision to apply to the European Commission of Human Rights was not taken by the only body empowered to do so by the Constitution;

(b) it was not submitted for the approval of the Vice-President of the Republic; and

(c) the application was made to the Commission by a person not constitutionally empowered to do so."

The respondent Government referred in this connection to their submissions in Applications Nos 6780/74 and 6950/75.

They further submitted that the "Greek Cypriot Administration which is not entitled to represent the State of Cyprus on the basis of the 1960 Constitution, is also not in a position to represent that State by presuming on the developments which occurred following its own aforementioned acts of violence. Following the deliberate destruction of the 1960 Constitution by the Greek Cypriot community, the developments which ensued brought about the two autonomous administrations currently in existence, each of which exercises authority over its own territory."

"International law, however, requires that in such cases a government must have effective control over a territory and a population if it is to be legally considered as a government entitled to exercise all the powers which international law and the domestic law of a State confer upon it. This emerges from the arbitral award of 18 October 1923 made by Chief Justice Taft of the United States Supreme Court in the 'Tinoco' case between Great Britain and Costa Rica (see United Nations Reports of International Arbitral Awards, Vol. I, pp. 381 - 382). A similar decision was made by the Court of Appeals in London in a case directly concerning the Cyprus situation, namely the case of Hesperides Hotels Ltd and another v. Aegean Turkish Holidays Ltd and another, when it noted the de facto situation in northern Cyprus in the following terms:

> '.... his Lordship would unhesitatingly hope that our courts could recognise the laws or acts of a body in effective control of a territory, even though it had not been recognised de jure or de facto by our Government; ....
>
> .... There was now an effective administration in north Cyprus which had made laws governing the day-to-day lives of the people ....' (see The Times Law Report, 23 May 1977)."(1)

The respondent Government argued that, "although international law lays no obligation on States in the matter of recognising States or governments, the international authorities responsible for assessing such situations nonetheless should do so according to objective criteria and regardless of any political considerations." They submitted that, since "the Greek Cypriot Administration has not effective control and authority over the whole territory or over the entire population of the Republic of Cyprus it cannot objectively claim to represent the State of Cyprus. It is therefore not legally possible to consider the Greek Cypriot Administration as the legitimate representative of the two island communities or of the State of Cyprus. Accordingly, it cannot lay claim to the title of 'High Contracting Party', required by Art. 24 of the European Convention on Human Rights in order to be able to apply to the Commission. This title belongs only to the State of Cyprus and not to one or other of the two autonomous administrations currently in existence on the island."

With regard to the Commission's competence ratione loci, the respondent Government submitted that the application "does not meet the requirement of Art. 1 of the Convention. This provides that for the Convention to apply the persons whose rights and liberties are alleged to have been infringed must come under the jurisdiction of the High Contracting Party against whom the application is made. Since, however, the territory in northern Cyprus constitutes the territory of the Turkish Federated State of Cyprus, anyone claiming

---

(1) The full text of the law report was submitted as Annex I to Annex I of the respondent Government's observations.

/...

that his rights and liberties have been violated comes under the jurisdiction of the Turkish Federated State of Cyprus. Thus no alleged event or act relating to the situation in northern Cyprus can be ascribed to any other State than the Turkish Federated State of Cyprus." In the respondent Government's view this applies all the more as, ratione temporis, the present application "is expressly concerned with events and acts alleged to have taken place after 18 May 1976, when the Turkish Federated State of Cyprus had already been officially proclaimed."

The respondent Government affirmed "that it is the Turkish Federated State of Cyprus which has full jurisdiction in northern Cyprus (see Appendix I, pp. 1 - 9). This is wholly borne out by the Constitution of the Turkish Federated State of Cyprus, which was adopted by the Turkish Cypriot community in a referendum on 8 June 1975 (see Appendix II, the text of the Constitution of the Turkish Federated State of Cyprus)."

"Art. 2 of the said Constitution provides that the Turkish Federated State of Cyprus shall have full jurisdiction over the territory of northern Cyprus in the following terms:

> 'The Turkish Federated State of Cyprus shall exercise all powers except for the powers expressly given to the Federal Republic of Cyprus on definite subjects and for this purpose shall set up the necessary organs.'"

"In accordance with the above-mentioned Article, legislative power in the Turkish Federated State of Cyprus is vested under Art. 63 of the Constitution in an Assembly of the Federated State. Art. 78 of the Constitution lays down that executive power shall be exercised by the Head of State and the Council of Ministers of the Turkish Federated State of Cyprus. The setting-up, organisation and running of the Administration are placed under the authority and control of the executive by Arts. 91 - 93 of the Constitution. Judicial power in the Turkish Federated State of Cyprus is to be exercised, under Art. 102 of the Constitution, by independent courts, whose establishment, membership and operation are governed by Arts. 103 - 124."

Apart from the above provisions, the "effectiveness of the jurisdiction of the Turkish Federated State of Cyprus over the territory concerned" has, according to the respondent Government, also been "confirmed internationally. In the aforementioned case of Hesperides Hotels Ltd and another v. Aegean Turkish Holidays Ltd and another, the Court of Appeal in London recognised the existence of two autonomous administrations on the island of Cyprus, and thus the de facto existence of the Turkish Federated State of Cyprus, in the following terms:

/...

> 'If it were necessary to make a choice between the conflicting doctrines his Lordship would unhesitatingly hope that our courts could recognize the laws or acts of a body in effective control of a territory, even though it had not been recognized de jure or de facto by our Government; at any rate in regard to the laws which regulated the day-to-day affairs of the people, such as their leases, their occupations and so forth, and furthermore that the courts could receive evidence of their state of affairs so as to see whether or not the body was in effect in control.
>
> Since 1974 the evidence pointed clearly to there being two autonomous administrations in Cyprus. Negotiations were in process for a bi-communal federal state. If they succeeded provision would no doubt be made for the properties to be restored to their former owners or compensation paid. Meanwhile, however, under laws purported to be made by the respective administrations, the properties had been let or occupied by persons authorized by the relevant administration.
>
> There was now an effective administration in north Cyprus which had made laws governing the day-to-day lives of the people ....'"

The respondent Government concluded that, the "effectiveness of the jurisdiction of the Turkish Federated State of Cyprus being thus established, it is not difficult to demonstrate the impossibility of attributing to the Republic of Turkey the ill-founded and often even contradictory allegations" of the applicant Government in the present application.

The respondent Government contested the applicant Government's allegation that the Turkish Cypriot security forces were controlled by the Turkish army (1): "Art. 93 of the Constitution of the Turkish Federated State of Cyprus expressly provides that all public services and institutions in the Turkish Federated State of Cyprus are run by public officers whose qualifications, appointment, rights, powers and responsibilities etc. are regulated by the laws of the Turkish Federated State of Cyprus. Art. 131, sub-paragraph 2 of the Constitution specifies that the expression 'public officer' includes members of the security forces. The status of these forces was laid down in a special law of the Turkish Federated State. The fact that there is a limited number of Turkish officers in the higher ranks of these security forces can in no way be regarded as a hierarchical link between the two forces. The forces of the Turkish Federated State of Cyprus are under the direct control of the Prime Minister of that State. The situation is, incidentally, similar to that of the Greek Cypriot National Guard. The Secretary General of the UN, moreover, noted this in his report No A/32/282 submitted to the Security Council on 23 October 1977, in the following terms:

---

(1) P. 86 above.

> '.... On the Cyprus Government side, a number of officers, especially senior commanders and staff officers of the national guard, appear to be Greek national military personnel. In addition, a Greek national contingent is stationed in the island. The number of Greek national personnel in Cyprus is not known accurately to UNFICYP, nor is the extent of withdrawals ....'"

The respondent Government also contested the applicant Government's allegations concerning control of northern Cyprus by the Turkish armed forces (1). They stated that "the Turkish armed forces are currently on this territory by the terms of the Treaty of Guarantee and with the consent of the appropriate authorities of the Turkish Federated State of Cyprus, with the sole aim of preserving the independence of Cyprus and safeguarding from any armed attack the rights and liberties of the Turkish Cypriot community which currently constitutes the population of the Turkish Federated State of Cyprus. As has been declared many times, the Turkish forces will withdraw as soon as a constitutional order is set up by mutual agreement between the island's two communities."

In a report by the UN Secretary General of 7 June 1977 (2), the region "currently under control of the Turkish Federated State of Cyprus" had been described as ".... part of the Island under Turkish Cypriot control". This report "was approved by the Security Council on 16 June 1977. Matters concerning the stationing, deployment and functions of the United Nation's peace-keeping force in Cyprus are discussed direct with responsible officials of the Turkish Federated State of Cyprus in accordance with the agreement of 13 December 1975 between the President of the Turkish Federated State of Cyprus and the UN Secretary-General's Special Representative in Cyprus. All these documents and international practices clearly show that in the north of the island jurisdiction belongs exclusively to the Turkish Federated State of Cyprus."

---

(1) P. 85 above.

(2) No S/12342 on the UN operations in Cyprus, paras 10 and 20.

With regard to the applicant Government's submissions concerning the "Co-ordination Committee" (1), the respondent Government stated that such a committee "does not exist and never has existed in Cyprus. Apart from the institutions provided for in its own constitution, no other authority either can or does control the decisions of the Turkish Federated State of Cyprus."

The statements by Turkish politicians concerning the Cyprus problem, which had been quoted by the applicant Government (2), in no way proved that control over northern Cyprus continued to be exercised by Turkey: "These statements by political figures are due to the great interest which the Turkish public naturally takes in the Cyprus problem and merely reflect the importance which Turkey attaches to the problem and to finding a just and lasting solution." Turkey's official position on the matter was laid down in the Demirel Government's programme in the following terms:

> "As regards the Cyprus question, the Turkish Government, bearing in mind the existing circumstances and the painful events of the past, is convinced that the only means of guaranteeing all the rights of the Turkish Cypriots and their economic and social development as well as their security and peace is by setting up a federal system in which the two communities will live under a bi-regional arrangement.
>
> We continue to hope that it will be possible to achieve such a political solution by peaceful means and through negotiations between the two communities.
>
> As the Government of Turkey, we shall continue with good will to make all the efforts necessary to set up an independent, bi-communal, bi-regional federal state which will provide a just and lasting solution to the Cyprus problem.
>
> As the Government of Turkey, we are determined to adopt a constructive attitude to ensure the success of negotiations between the two communities, whose course will be governed by the existing circumstances in Cyprus. We have a right to expect a similarly constructive attitude on the part of Greece."

---

(1) P. 86 above.

(2) P. 86 above.

/...

The respondent Government added that, during a visit to Turkey from 7 to 10 January 1978, by Dr Kurt Waldheim, the Secretary-General of the UN, Mr Bülent Ecevit, the Prime Minister of the new Turkish Government, "said that there was general agreement to set up a non-aligned, independent, bi-communal, bi-regional federal state in Cyprus and that negotiations between the leaders of the two national communities which had jurisdiction over their respective territories would be resumed shortly."

The respondent Government stated that the "proclamation of the Turkish Federated State of Cyprus was welcomed by Turkish statesmen" and quoted messages sent on this occasion to "Mr Rauf R. Denktash, the President of the Turkish Federated State of Cyprus", by the President of the Turkish Republic and the Presidents of the Turkish Senate and the Turkish National Assembly.

The respondent Government concluded that the "democratic procedure followed when the Constitution of the Turkish Federated State of Cyprus was drawn up and adopted together with the actual provisions of the Constitution are the best answer to such charges."

In the Government's view, it was, "moreover, easy to quote declarations on the Cyprus problem made by Greek statesmen which indicate that they are more inclined to envisage the matter from the Hellenic point of view". The respondent Government referred in this respect to statements which, according to the Government, were made by Prime Minister Karamanlis on 24 August 1976 and 14 December 1977 and by the Greek ambassador in Nicosia on the latter date.

With regard to the applicant Government's submission that Turkey continued to extend its services in northern Cyprus (1), the respondent Government stated that this allegation "bears no relation to the facts and in no way proves that Turkey has jurisdiction over the territory in question. Indeed, all these services function strictly under the absolute jurisdiction of the Turkish Federated State of Cyprus. They in fact constitute purely technical co-operation provided at the Turkish Federated State's request. No one can refuse to a State or autonomous administration the right to freely request co-operation from another State when it thinks fit. In view of the difficulties experienced by the Turkish Federated State of Cyprus in its early days in organising its public services and its economy, some of these services were organised with assistance and co-operation from Turkey."

---

(1) P. 86 above.

"In line with Art. 90 of the Constitution of the Turkish Federated State of Cyprus (see Appendix II ....), institutions of the Turkish Federated State of Cyprus have concluded various co-operation agreements with various bodies in Turkey."

The respondent Government found it "surprising that the Greek Cypriot Administration, while attempting to demonstrate in its application that Turkey has jurisdiction over the territory in question and that consequently all the alleged events and acts are attributable to Turkey, overlooks that the same matters relating to the alleged violations are the subject of negotiations with officials of the Turkish Federated State of Cyprus." The Government observed that, for example, "the allegation concerning missing persons has several times been the subject of negotiations between officials of the Turkish Federated State of Cyprus and those of the Greek Cypriot Administration - President Rauf R. Denktash and the late Archbishop Makarios also discussed this matter together on two occasions - in the presence, moreover, of Dr Kurt Waldheim, the Secretary-General of the United Nations, or his Special Representative. Furthermore, the Secretary-General of the United Nations mentions this in his report of 25 February 1977 in the following terms:

> 'The missing persons issue was discussed during a meeting which I held in Nicosia on 12 February 1977 with His Beatitude Archbishop Makarios and His Excellency Mr Denktash. Agreement was reached to set up a new investigatory machinery covering missing persons of both communities. The special representative of the Secretary-General is currently discussing the relevant details with both communities.'"

The Government observed that the "representatives of the Turkish Federated State of Cyprus will certainly be able to provide the Commission with all the necessary information and data on this subject."

"Similarly, the Greek Cypriot Administration's allegation that Turkey is responsible for the displacement of persons is equally without foundation and is inconsistent with the facts. This item too was the subject of negotiations at the 3rd Vienna meeting between representatives of the Turkish Federated State of Cyprus and of the Greek Cypriot Administration and even led to an agreement between the parties on 2 August 1975. Moreover, arrangements were made between the Turkish Federated State of Cyprus and UNFICYP concerning the movement of persons wishing to go voluntarily from the north to the south of Cyprus (see Report No S-12342 by Dr Kurt Waldheim, the Secretary-General of the United Nations, submitted to the Security Council on 7 June 1977)."

The applicant Government's attitude was equivocal in that, while accusing Turkey of preventing the movement of persons in Cyprus, they "stated on 23 March 1977 that there could be no question of more than 10% of the supposedly displaced population returning to the north."

The respondent Government further submitted that the "allegations concerning violations of property belonging to Greek Cypriots have also been the subject of negotiations between the Turkish Federated State of Cyprus and the Greek Cypriot Administration on various occasions (see Appendix IV, the text of Report No S/12323 to the Security Council by the Secretary-General of the United Nations on 30 April 1977). All the foregoing clearly shows that jurisdiction over the territory in question belongs fully and exclusively to the Turkish Federated State of Cyprus."

The respondent Government considered that this was confirmed "in the recent decision of the Council of Europe's Committee of Ministers on 21 October 1977 concerning Applications Nos 6780/74 and 6950/75 and in which:

> '.... the Committee of Ministers considers that the enduring protection of Human Rights in Cyprus calls for the re-establishment of peace and confidence between the two communities on the island.

---

(1) Cf. Annex XXIII to Annex I of the respondent Government's observations ("Statement by Archbishop Makarios").

/...

> It therefore strongly urges the parties to resume inter-communal talks with the minimum of delay.'" (1)

The respondent Government concluded that the application was inadmissible also on the ground "of lack of competence ratione loci in that it concerns a territory over which Turkey has no jurisdiction."

---

(1) The full text of this decision, submitted by the applicant Government under cover of their letter of 8 June 1978, reads as follows:

> "The Committee of Ministers has examined applications numbers 6780/74 and 6950/75 filed by the Republic of Cyprus after the events of 1974.
>
> It has likewise taken into consideration the Commission's report as well as the memorial of the Republic of Turkey on the question of Human Rights in Cyprus.
>
> The Committee finds that certain events which occurred in Cyprus constitute violations of the European Convention for the Protection of Human Rights. Consequently, it asks that measures be taken in order to put an end to such violations as might continue to occur and so that such events are not repeated.
>
> In this respect, the Committee of Ministers considers that the enduring protection of human rights in Cyprus calls for the re-establishment of peace and confidence between the two communities on the island. It therefore strongly urges the parties to resume intercommunal talks with the minimum of delay.
>
> If in 9 months' time the situation so requires, the Committee reserves the right to place this matter again on its agenda, in accordance with the provisions of Article 32 of the Convention."

In support of their thesis that the application was substantially the same as Applications Nos 6780/74 and 6950/75 the respondent Government submitted that the present application "deals with the same alleged acts and events as those already covered in Applications Nos 6780/74 and 6950/75. They allege the detention or death of about two thousand missing persons, the displacement of persons, the separation of families and various infringements of Greek Cypriots' property rights." "The same alleged acts and events were covered by the Report of the Commission on 10 July 1976 in the chapters entitled 'Deprivation of life' (Report, paras. 315 - 356), 'Deprivation of liberty' (paras. 213 - 314), 'Displacement of persons' (paras. 89 - 212, of which paras. 206 and 211 relate to the separation of families) and 'Deprivation of possessions' (paras. 411 - 487)."

The respondent Government invoked the "well established general legal principle that no one can be tried twice on the same charges. This principle, which is expressed in the adage 'non bis in idem', is amply confirmed in international case-law." As "decisions based on this principle", the Government quoted the Commission's decisions in the admissibility of Applications Nos 499/59 (Yearbook II, p. 397), 1611/62 (Yearbook VIII, p. 167), 509/59 (Yearbook III, p. 174), 1307/61 (Yearbook V, p. 230) and 3479/68 (Collection of Decisions 28, p. 132)."

The respondent Government argued that, although these decisions "concerned individual applications made under Art. 25 of the Convention, it is indisputable that, given this principle of international law, whose fundamental rules are incorporated - according to the Commission in its decision on the De Becker Case No 214/56 (Yearbook II, p. 214) - in the European Convention on Human Rights, the rules adopted in these decisions apply to applications made under Art. 24 of the Convention."

The Government concluded that the present application, being "identical with Applications Nos 6780/74 and 6950/75", is inadmissible as being substantially the same as a previous application.

With reference to Art. 26 of the Convention, the respondent Government observed that no evidence had been provided "either that domestic remedies have been exhausted or that there are special circumstances which dispense the applicant from this obligation according to the generally recognised rules of international law." The application "simply states that the alleged violations were committed in circumstances which excuse the failure to resort to any domestic remedy. In support of its argument the Greek Cypriot Administration refers to the Commission's decision on the admissibility of Applications Nos 6780/74 and 6950/75. While refraining from discussing the merits of the decision on admissibility made by the Commission in relation to Applications Nos 6780/74 and 6950/75, the Turkish Government wishes to draw the Commission's attention to the fact that the alleged victims of violations of the Convention have made no use either of the judicial authorities of the Republic of Turkey or of the judicial system set up by the Turkish Federated State of Cyprus, which comprises effective and adequate institutional guarantees (see Arts. 102 - 124 of the Constitution of the Turkish Federated State of Cyprus at Appendix II and Appendix I, p. 38, para. 73 and p. 41, para. 86)."(1)The respondent Government also considered that the six months rule had not been complied with.

They submitted that international law "allows the requirement that domestic remedies shall be exhausted to be waived only in cases where there is no effective remedy for a given situation. Under international law the period of time allowed for an application in such cases begins to run from the date on which the alleged event or act took place."

"In the case of Application No 8007/77, even if one accepted the Greek Cypriot Administration's argument that there is no real domestic remedy for the situation, the said administration would still be required to observe the time-limit of six months, which in that case would run from the date on which the events and acts complained of allegedly took place. Two dates apply here. One of them is expressly given as 18 May 1976 by the Greek Cypriot Administration in its application. If one bears in mind that the application concerned was lodged with the Commission on 6 September 1977, it cannot cover acts or events alleged to have taken place before 6 March 1977. It follows from this that the Commission lacks competence ratione temporis to consider any alleged act or event which took place before 6 March 1977."

"However, the real date of the alleged acts and events submitted for the Commission's consideration is of greater importance and relevance in its consequences than the date of 18 May 1976 given by the Greek Cypriot Administration as the date on which the alleged acts and events began to take place. Supposing for a moment that we are dealing with new events and acts which really took place, even though they have already been the subject of Applications Nos 6780/74 and 6950/75, they would nonetheless already be outside the Commission's competence ratione temporis since they arose, as the Greek Cypriot Administration moreover claims, from the events of July - August 1974. It is in fact expressly claimed in the part of the application concerning missing persons that, for example:

---

(1) Cf. also Annex XXXI to Annex I of the respondent Government's observations ("Some examples of Greek Cypriot complaints which have been dealt with by courts of the Turkish Federated State of Cyprus").

/...

> 'About 2,000 Greek Cypriots .... who were last seen alive in the occupied areas of Cyprus after the invasion and who were brought under the actual authority and responsibility of the Turkish army in the course of the aforesaid military action or during the military occupation of the north of Cyprus are still missing.'

This is, moreover, confirmed by the date of the meeting held in the presence of United Nations officials, to which the application makes reference. The same can be said of the sections of the application relating to other alleged violations, since there are several references to United Nations decisions or documents or to press articles concerning the alleged acts and events, which go back well before the terminus a quo application to the Commission is possible."

The respondent Government concluded that the application was inadmissible under Art. 26 of the Convention.

They finally argued that the application "is a flagrant abuse of procedure. By making accusations of a political nature it aims to further a propaganda campaign in the guise of protecting human rights. It should be emphasised that the same administration, which has officially and publicly admitted that 'Questions of principle like freedom of movement, freedom of settlement, the right of property and other specific matters are open for discussion taking into consideration the fundamental basis of a bi-communal federal system and certain practical difficulties which may arise for the Turkish Cypriot community' (see the agreement reached at the meeting between President Denktash and the late Archbishop Makarios on 12 February 1977 in the presence of Dr Kurt Waldheim, the Secretary-General of the United Nations, Appendix IV), sees no objection to making an application to the Commission containing complaints relating to these very problems. The very fact that Application No 8007/77 is substantially the same as Applications Nos 6780/74 and 6950/75 already made to the Commission clearly shows that the aim of the Greek Cypriot Administration is to derive political advantage and to intensify its propaganda campaign by misusing the machinery set up under the Rome Convention for the sole purpose of protecting human rights and fundamental freedoms. In this context the fact that the Commission's secret Report of 10 July 1976 was leaked to the press is significant; the inquiry held by the Council of Europe's Secretariat showed that no indiscretion had been committed by any civil servant at the Council of Europe."

The respondent Government also considered that "the comments of Mr Rauf R. Denktash, the President of the Turkish Federated State of Cyprus, are a perfect illustration, taken as a whole, of the improper nature of the application (see Appendix I)."

In conclusion the respondent Government again referred to the above passage from the Committee of Ministers' decision in Applications Nos 6780/74 and 6950/75.

(b) Applicant Government

In their observations of 27 February 1978, in reply to the respondent Government's observations on the admissibility, the applicant Government referred with regard to their locus standi (1) to the Commission's decision on the admissibility of Applications Nos 6780/74 and 6950/75 (2). They considered that the position remained "substantially the same" and they therefore relied on their submissions in the two previous applications.

The only material change in the composition of the applicant Government "was the election of the President of the Republic, Mr Spyros Kyprianou, following the death of the previous President of the Republic Archbishop Makarios. On the death of Archbishop Makarios on 3 August 1977, Mr Kyprianou, who was then President of the House of Representatives, assumed the duties of the President of the Republic in accordance with the provisions of Art. 44 of the Cyprus Constitution. On 31 August 1977 he was elected President of the Republic at a by-election which has taken place in accordance with the provisions of para. 4 of Art. 44 and Art. 39 of the Constitution which provides that 'if there is only one candidate for election that candidate shall be declared as elected.'"

Since then, Mr Kyprianou had been holding "the office of the President of the Republic for the unexpired period of office of the President whose vacancy he has been elected to fill." This period expired on 28 February 1978. "In the meantime Mr Kyprianou was re-elected as President of the Republic in accordance with the provisions of Art. 43 (3) of the Constitution, for the period of five years commencing on the date of his investiture i.e. 28 February 1978 (Art. 43 (1))."

The applicant Government observed that, in accordance with Art. 1 of the Constitution, "the President of the State of Cyprus should be a Greek Cypriot and should be elected by the Greek Cypriot community, as in the case of Mr Kyprianou."

---

(1) Cf. pp. 98 - 110 above.

(2) Cf. p. 109 above.

The applicant Government stated that, in their present form, they had "continued to be recognised from an international law point of view as the lawful government of the Republic. The recognition of Mr Kyprianou as the President of the Republic was expressly reasserted by relevant official statements of other countries." "All the diplomatic representatives have continued to be accredited to the President of the Republic and in all her international relations the Republic was at all material times represented by the present Government."

"The United Nations also has continued to recognise the present Government as the lawful government of the Republic of Cyprus (see UN Resolution No 35/15 of 9 November 1977 and the Security Council's Resolutions No 414/77 and No 422/77 of 15 December 1977) and the one that has 'the responsibility of the maintenance and restoration of the law and order in Cyprus' (Resolution of the Security Council 4.3.1964, for the establishment of UN Peace-keeping force in Cyprus following the events of December 1963 re-affirmed every year, the last re-affirmation being through Resolution No 422 (1977) of 15 December 1977)."

"Also the Council of Europe has continued to recognise the present Government as the lawful government of the Republic and its appointed Representatives as duly representing the Republic."

Referring to their written submissions in Application No 6780/74, the applicant Government further stated that, as a matter of municipal law, "the Constitution of the Republic remains in force and is applied by the Government of Cyprus subject to the well established doctrine of necessity, i.e. to the extent that it is impossible to comply with some of its provisions that require the participation of the Turkish Cypriots, the Government has to take exceptional measures which, though not in conformity with the strict letter of the Constitution, are necessary to save the essential services of the State temporarily until the return to normal conditions so that the whole State might not crumble down." The Turkish Cypriot members of the Government had "continued to abstain from their duties."

With regard to Art. 4 of the Treaty of Guarantee, invoked by the respondent Government (1), the applicant Government submitted that this Article provided for a right "to take action with the sole aim of re-establishing the state of affairs" created by the Treaty and that, according to Art. 2 of the Treaty, Turkey undertook to "recognise and guarantee the independence, territorial integrity and security of the Republic of Cyprus and also the state of affairs established by the basic Articles of its Constitution."

---

(1) P. 98 above.

Referring to the state of affairs which followed the Turkish military action, the applicant Government considered "that such 'intervention' and the ensuing continuing military presence of Turkey in Cyprus not only cannot be justified under the provisions of the Treaty of Guarantee but they amount to flagrant contraventions of its aforesaid Articles and the relevant principles of international law."

According to the applicant Government, the "continuing occupation of the northern part of Cyprus by the Turkish troops (which is also contrary to the express provisions of the relevant Resolutions of the United Nations General Assembly and Security Council), preventing the lawful Government of Cyprus to exercise de facto control over that part of the Republic, in no way affects the legality of the Cyprus Government as a matter of international law."

The principle invoked by the respondent Government (1), according to which effective control by the Government over the territory and the population of the State should be a prerequisite for acknowledging the capacity of the Government to represent the State, was not applicable in cases where a Government already enjoyed international recognition, as in the case of the Cyprus Government. The applicant Government referred to the cases of Governments in exile during the Second World War and stated that the Tinoco case, quoted by the respondent Government, related to a non-recognised de facto Government.

The principle in question did not affect the legality of a Government "whose inability to exercise effective control over certain areas of its territory is due to a military occupation or 'intervention' by a foreign country as in the case of Cyprus." Furthermore, the applicant Government have been "recognised as the lawful Government of the Republic by the overwhelming majority of the people of Cyprus. In fact the President of the Republic and the members of the House of Representatives were elected by the majority of the people of Cyprus." In any case, the international recognition enjoyed by the applicant Government was by itself sufficient in international law to give the Government "the capacity and authority to represent Cyprus in the international sphere."

---

(1) P. 100 above.

/...

Further, and without prejudice to the above, the applicant Government submitted that the case of Hesperides Hotels Ltd and another v. Aegean Turkish Holidays Ltd and another, decided by the British Court of Appeal in London and referred to in the observations of the respondent Government (1), "does not in any way lend support to the argument that the Cyprus Government cannot legally represent the Republic, for the following reasons":

- "the passages in the judgment relied on by the Turkish Government do not represent the views adopted by the Court as a whole but only of one of the three judges who dealt with the case (Lord Denning M.R.)";

- "the case related to a civil action between individual owners of hotels and a private company registered in London. The Cyprus Government, having no locus standi in the case, had no opportunity of answering the material on which the views .... cited in the Turkish observations were based. Not even the plaintiffs were given the opportunity of answering the material in question, which consisted of an affidavit by the so-called 'Attorney-General of the Federated State of Cyprus'. This is expressly stated in the judgment of the other members of the Court in the same proceedings. Thus Roskill L.J.,in delivering the majority judgment of the court (Scarman L.J. agreeing) and referring to the evidence in question, read to the court by Counsel for Appelants Mr Neill, observed the following (2):

  > 'But I would venture to add this. Mr Neill read us from the evidence one version of the recent events in Cyprus. The plaintiffs have not had the opportunity of answering the evidence and, no doubt, had they had the opportunity, much could and would have been said on the other side. History, especially recent controversial political history, is not one sided.'";

- an appeal was pending against the decision before the House of Lords; it was fixed for hearing on 8 May 1978;

- the findings in the minority judgment relied on by the respondent Government "are in any case erroneous" (the applicant Government reserved the right to elaborate on this subject at the oral hearing); and

---

(1) P. 100 above.

(2) The applicant Government quoted The Times Law Report of 23 May 1977 and the English Weekly Law Report, Part 36, of 4 November 1977, p. 671, para. C.

- "even the aforesaid minority judgment does not support the view that the present Government of Cyprus cannot legally represent Cyprus in the international plane."

Regarding the Geneva Declaration invoked by the respondent Government (1) the applicant Government recalled that this declaration had already been considered in Applications Nos 6780/74 and 6950/75, where the Commission found that the declaration "did not affect the continuing existence of Cyprus as a State and High Contracting Party to the European Convention on Human Rights". The same declaration "was also rightly considered - as it seems - as irrelevant to the question of the legal capacity of the Cyprus Government to represent the Republic of Cyprus for the purpose of proceedings under Art. 24 of the Convention."

In the applicant Government's view the Geneva declaration could in no case be regarded as a valid statement of the state of affairs in Cyprus considering its full text, the prevailing circumstances at the time and the events which followed, since:

- the declaration was made soon after the coup of 15 July 1974 and "as a result of the Turkish invasion of Cyprus, and with the object of avoiding further bloodshed, Turkey being at the time more or less in a position to dictate her terms";

- the declaration was superseded by later events and declarations - such as the subsequent Resolutions of the United Nations (Resolutions 355/74 of 1 August 1974, 36/74 of 30 August 1974, 364/74 of 13 December 1974 etc.), which reaffirmed the position adopted by the United Nations before the invasion and, according to the applicant Government, recognised them as the Government of Cyprus, noting their consent for the stationing of the UK Peace keeping force all over Cyprus - and by the statement of the United Kingdom Government referred to below (2);

- after the declaration "and in spite of Turkey's undertaking contained therein and the Security Council's Resolution No 353 fo 20 July 1974 expressly reaffirmed by the three Ministers in the same declaration, Turkey continued to expand gradually her occupation over Cyprus territory through her armed forces till 8 August 1974";

---

(1) P. 98 above.

(2) P.118.

/...

- from 9 to 14 August 1974 another Conference took place at Geneva between the Foreign Ministers of the United Kingdom, Greece and Turkey and representatives of the Greek and Turkish communities in Cyprus, as agreed in the said declaration. At the Conference, "Turkey deviated from the terms of the declaration and insisted on a solution of the Cyprus constitutional problem on the basis of a geographical division of Cyprus and threatened to use force to impose such solution if the Turkish proposals were not adopted by the Conference";

- "in the early hours of 14 August 1974 Turkey launched a new big scale military operation which ended on 16 August with the result that another substantial part of the Republic of Cyprus came under Turkey's full occupation and control. This military operation was launched without any provocation and with the sole object of gaining control over the rest of the northern part of the territory of the Republic, which was included in Turkey's so-called 'Attila Plan', contrary to the terms of the declaration in question";

- the declaration "should in any case be read in conjunction with its rider i.e. 'without prejudice to the conclusion to be drawn from this situation'". It should also be borne in mind "that the Cyprus Government was not a party to the declaration".

With regard to the proclamation on 13 February 1975 of the "Turkish Federated State of Cyprus" the applicant Government recalled that this had been taken into consideration by the Commission in its decision on the admissibility of Applications Nos 6780/74 and 6950/75. They stressed that "the 'State' in question purports to be administered by the same body of Turkish Cypriots who from 1963 until the Turkish invasion in 1974 were trying to assert authority against the Republic of Cyprus in the form of the so-called 'Turkish Cypriot autonomous administration' within pockets of armed insurrection consisting of small areas within the State of Cyprus scattered all over the island and surrounded by road-blocks and fortified positions and amounting to 4.86 per cent. of the whole territory of Cyprus. Only about 3 per cent. of that area was within the north part of Cyprus which came under the control of the Turkish invading army. Therefore the body of persons in question never acquired or exercised themselves 'effective control' over the occupied areas (38 per cent. of the island) now claimed to be the so-called 'Turkish Federated State'. Actual and effective control over these areas was acquired and remains in the hands of the Turkish army which acts under the direct orders of Turkish Government (1)."

---

(1) See also p.119 below.

The applicant Government observed that the "Turkish Federated State of Cyprus" had been proclaimed "during the Turkish military occupation and after the Geneva Declaration" and that it "has never had any legal standing as a matter of municipal or international law: it was incompatible with the constitutional structure of the Republic of Cyprus as envisaged by the Cyprus Constitution and contrary to the Treaties of Establishment and Guarantee and the United Nations Resolutions on Cyprus; it never had a sovereign government of its own and was not recognised by the United Nations or any country in any way."

"The proclamation of this 'State' was expressly deplored by the UN Security Council (Resolution 367, 12 March 1975). It was also deplored by the two Guarantor States, Greece and the United Kingdom. The United Kingdom Minister of Foreign Affairs in the House of Commons, on 14 February 1975, described it as 'an action undermining the sovereignty, integrity and independence of Cyprus'. This was repeated by the United Kingdom Representative in the Security Council who inter alia stated the following:

> 'I should like to make it clear that, as far as we are concerned, Mr Denktash's declaration does not alter, and has not altered, our attitude towards the legitimate Government of Cyprus, nor towards our obligations under the 1960 Treaties. There is only one legitimate Republic of Cyprus, and there is only one Government.'"

The applicant Government further submitted that the "Constitution of the Turkish Federated State of Cyprus" was "not only incompatible with the Cyprus Constitution - which remains in force pending an agreement between the two communities for a new Constitution - but also with the existence of the State of Cyprus itself and amounts to an attempt to establish a separate State contrary to the relevant UN Resolution and the international agreements governing the establishment of the Republic of Cyprus which Turkey invokes for her military 'intervention' and continuing occupation of the northern part of Cyprus (Treaties of Establishment and Guarantee)."

The constitution "was never approved by the people of Cyprus as a whole or even by the population of Turkish occupied areas, the vast majority of which consists of the Greek Cypriot refugees. At the same time it could not even be the product of the free choice of the Turkish Cypriots considering the situation of foreign military occupation of the area in question. It is simply an implementation of the long existing and declared policy of Turkey on Cyprus. The essential prerequisite of the existence of a State is not satisfied in the case of the 'Constitution' in question."

The applicant Government concluded that they had "the legal capacity to act as Applicant in the present proceedings and that the relevant objection of the Turkish Government should be rejected."

With regard to the Commission's competence ratione loci (1), the applicant Government again referred to the Commission's decision on the admissibility of Applications Nos 6780/74 and 6950/75 (loc. cit. p. 136). They submitted that the factual situation "on which the objection of Turkey in relation to the present application, regarding the question of jurisdiction over the northern part of Cyprus, is based, is substantially the same as that prevailing at the time." "The so-called 'Turkish Federated State of Cyprus' had already been proclaimed before the aforesaid decision and the relevant facts relating to such proclamation were taken into consideration by the Commission in deciding the said issue." "The Turkish military troops continue to have authority over the northern part of Cyprus and operate solely under the direction of the Turkish Government in the same way and for the same alleged purpose as at the time of the above decision."

The applicant Government concluded that the respondent Government's objection "should be dismissed for the same reasons as those already adopted in the decision on the admissibility of Applications Nos 6780/74 and 6950/75." "In any case the applicant Government reiterates its position regarding the question in issue, as set out in the particulars of the present application and submits that, on the basis of the facts stated therein, the objection relating to the alleged lack of jurisdiction of Turkey - for the purposes of Art. 1 of the Convention - in respect of the violations complained of, cannot stand in law."

The applicant Government furthermore contended that, "on the basis of the facts set out in the particulars of the application, the northern part of Cyprus is in law under the military occupation of Turkey. The so-called 'Turkish Federated State' amounts to nothing else than a legal fiction and a euphemism of the administration carried out in the northern part of Cyprus in consequence of the military occupation and control of such part by Turkey and in accordance with the policy of the Turkish Government. It never possessed basic elements of a 'state' under international law such as sovereign government .... and has not become an international person and a subject of international law, as it never received international recognition (2) .... It never had in fact or in law any autonomy. As already explained its 'territory' was acquired and is maintained by the force of arms of the Turkish troops and it lacks essential services of its own (postal services, currency etc.) such services being provided by Turkey. In fact the very existence of the so-called 'Turkish Federated State of Cyprus' and its functioning depends entirely on the presence of the Turkish troops and, of course, on the policy of the Turkish Government. It cannot therefore exercise any authority or jurisdiction of its own (eo jure)." In other words "the so-called 'Turkish Federated State of Cyprus' is the product of the military occupation of the northern part of Cyprus by Turkey and its 'authority' and 'power', whatever that may be, is derived directly and is subject to the will of the Turkish occupying forces, who prevent the lawful government from exercising authority over the area which purports to belong to the 'State' in question."

---

(1) Cf. pp. 100 - 118 above.

(2) The Government quoted Oppenheim (op. cit. Vol. 1, pp. 118 - 119 and 125 - 126) and Delbez (Les principes généraux de droit international publique, p. 157).

The applicant Government observed in this respect "that, according to the principles of international law, 'when the legitimate sovereign is prevented from exercising his powers, and the occupant, being able to assert his authority, actually establishes an administration over a territory, it matters not with what means and in what ways, his authority is exercised (1)."

"Further and without prejudice to the above" the applicant Government stressed that the "exercise of actual and effective authority in the so-called 'Turkish Federated State of Cyprus' depends entirely on the will and power of the Turkish army which may act independently of the consent or the wishes of the 'officials' of the said 'State'. This is well illustrated by the following passages of the statement of the U.N. Secretary General, made to the Security Council on 15 September 1977, on the question of colonisation of Varoshia within the area occupied by the Turkish troops and therefore within the alleged jurisdiction of 'Turkish Federated State of Cyprus': (2)

> 'Varoshia, the new quarter of Famagusta south of the Turkish Cypriot inhabited wall city, was evacuated by its Greek Cypriot inhabitants and occupied by Turkish troops during the second military operation, in August 1974. While the Greek Cypriots and other residents have not been permitted to return to Varoshia, Turkish Cypriots have also been prevented from settling there ...... On 20 July 1977 Mr. Ecevit, while still Prime Minister of Turkey, stated that his Government has taken steps to open Varoshia for civilian settlement. He rejected the impression that Varoshia was being reserved for the purpose of territorial concessions through the intercommunal talks ...... In various statements Mr. Denktas and other Turkish Cypriot spokesmen have emphasised the point that Varoshia was an integral part of the Turkish Federated State of Cyprus, whose status was a Turkish Cypriot internal affair'".

---

(1) The Government quoted Oppenheim (op. cit, Vol. II 7 ed. p. 435) and Art. 42 of the Hague Regulations.

(2) Appendix E to the "Particulars of the Application" (cf. p. 91 above).

The applicant Government also quoted some "statements of 'officials' of the Turkish Federated State of Cyprus' claiming authority of such 'state' over Varoshia as in the case of any other part of the occupied area".

Referring to the above statement of the U.N. Secretary General, the applicant Government concluded "that 'the Turkish Federated State of Cyprus', though presented by Turkey as having actual authority over the northern part of Cyprus and though itself tries to appear as having such authority, in actual fact real authority and control is exercised by the Turkish Government through its troops, the so called'Turkish Federated State of Cyprus' having only an ostensible authority of no substance and effect".

The applicant Government considered that this was further illustrated by the statements of the members of the Turkish Government referred to in the particulars of the application (1). With regard to the respondent Government's interpretation of these statements (2), the applicant Government observed that "statements made by members of the Turkish Government, whether called political figures or not should be taken as responsible official statements on the subject to which they relate regardless of the reasons for which they are made or the aim sought to be achieved thereby".

"Another relevant example of such responsible statement is the one made by the Prime Minister of Turkey, Mr. Ecevit, to the U.N. Secretary General, during the latter's last visit in Ankara in relation to the Cyprus problem. This statement further strengthens the proposition supported by the Cyprus Government that it is Turkey who is in fact exercising actual and decisive authority over the northern part of Cyprus. According to a press communique issued by the Office of the Spokesman of the U.N. F.I.CYP. in Cyprus on 26 January 1978, the U.N. Secretary General is quoted as having said on this subject the following:

> 'I have just returned from a lengthy trip to a number of member States, where I concentrated on discussions concerning resumption of Cyprus talks. There is a new development: when I was in Ankara, Prime Minister Ecevit informed me that his Government intended to put forward concrete proposals on the territorial and constitutional aspects of the Cyprus problem ...... Although I an always careful in this regard, after the many disappointments that we have gone through in the past, I think that there has been a new development. For the first time Turkey is ready to make concrete proposals on both main aspects of the Cyprus question.'"

---

(1) Cf. p. 66 above.

(2) Cf. p.104 above.

The applicant Government submitted that the statements made by Prime Minister Karamanlis and by the Greek Ambassador in Cyprus "obviously do not in any way indicate any assertion of authority on the part of Greece in relation to any part of Cyprus".

The applicant Government further stressed that "the so called Constitution of the 'Turkish Federated State of Cyprus' should be considered as having no legal validity or effect". It was "the product of the declared policy of Turkey and amounts to nothing more than an attempt to clothe the so called 'Turkish Federated State of Cyprus' with independent authority while in actual fact it has none. The question that matters for the purposes of the objection under consideration is not who appears to have authority but only who in fact exercises authority".

With regard to Annex I of the respondent Government's observations, the applicant Government submitted that Mr. Denktash's statements "though they should be overlooked - do not in any case carry Turkey's case any further because:

- "they amount in substance to a repetition of the position adopted by Turkey, the reply to which has already been given above";
- "considering Mr. Denktash's difficult position in an area which continues to be under the military occupation of Turkey and where the Turkish Government through its troops has the last word, especially in respect of the very existence of the 'Turkish Federated State of Cyprus' whose 'President' is Mr. Denktash, any statement by him incompatible with the position taken by the Turkish Government is inconceivable. Therefore Mr. Denktash's statements in question cannot be considered as free and voluntary statements and for this reason cannot be relied on legally as a safe and valid account of the actual state of affairs. To accept the contrary would not only amount to acting on evidence of no juridical value but it would also be unfair for Mr. Denktash himself and more particularly for the Turkish Cypriot community which is also a victim of the military occupation by Turkey";
- "Mr. Denktash cannot be considered as a spokesman of the Turkish Government in a case where the complaints for the relevant violations of human rights are directed against such Government".

With regard to the decision of the Court of Appeal in England in the case of Hesperides Hotel Ltd. and another v. Aegean Holidays Ltd. and another, the applicant Government referred to their observations as to the first objection on the admissibility (1). They stressed "that the Court of Appeal in that

---

(1) P. 115 above.

/...

case not only acted on one-sided evidence but did not even have any evidence at all before it regarding the continuing military occupation by Turkey of the northern part of Cyprus and the atrocities committed by the Turkish troops in consequence of such occupation".

Regarding the reference by the U.N. Secretary General in his Report of 7 June 1977 (S/12342) to the northern part of Cyprus as "Turkish-Cypriot controlled part of the island" (1) the applicant Government submitted that the "question of whether the northern part of Cyprus is under the control of the Turkish Cypriots or the Turkish troops is a question of mixed law and fact. Obviously the U.N. Secretary General in his Report does not purport to make a ruling on such a question. He has simply chosen a description relating to ostensible authority. It was neither absolutely necessary for the purposes of his Report nor was he expected to lift the veil and make a legal finding - on a question that appeared to have political implications - to the effect that the northern part of Cyprus is under the military occupation of Turkey. On this subject the letter of Mr. Brian E. Urquhart, U.N. Under-Secretary General for Special Political Affairs, dated 3 February 1978, and addressed to the Cyprus Representative at the U.N. is very enlightening. According to this letter the expression 'Turkish Cypriot controlled part of Cyprus' used in the Report in question 'does not constitute a statement of position or an evaluation by the Secretary General concerning political or military relationship in the north.... The Secretary General's reports to the Security Council explicitly refer to the presence of the Turkish forces in the area, and to UNFICYP's maintaining liaison with those forces in the context of the surveillance over the cease-fire (S/12342, paras. 13, 16; S/12463, paras. 16, 19). The Secretary General's report to the General Assembly of 25 October 1977 referred in this connection to the question of the implementation of the Assembly's resolution (A/32/282, para. 20)'".

With regard to "purely factual matters" the applicant Government quoted the following further extracts from the same Report of the U.N. Secretary General: (2)

> "In supervising the cease-fire lines of the National Guard and the Turkish forces and the area between these lines, UNFICYP continues to use its best efforts to prevent a recurrence of fighting by persuading both parties to refrain from violations of the cease-fire by firing, by movement forward of the existing cease-fire lines or by construction of new defensive positions."

---

(1) Cf. p. 103 above.

(2) Paras. 9, 13 and 16.

> "In accordance with para. 5 of Security Council Res. 401(1976) UNFICYP has continued to emphasise to both sides the essential requirement of full co-operation at all levels to enable it to carry out its role effectively. These efforts have resulted in closer liaison with both sides. An effective working relationship and clear channels of communication exist between UNFICYP and both the National Guard and the Turkish forces. Specifically meetings are held at the Chief of Staff level on a regular basis or as the situation requires. Similar meetings are regularly held between UNFICYP Sector Commanders and their counterparts in the National Guard and the Turkish forces, respectively."
>
> "A recurrent violation by temporary forward movement concerns patrols sent by the Turkish forces on a regular basis between Pyla and Troulli hill."

The applicant Government submitted "that the above support fully the contention that the northern part of Cyprus is under the actual military control of the Turkish forces".

With regard to the respondent Government's argument that "nobody can deny to a State or to an autonomous administration the right to request freely co-operation from another State when it thinks fit" (1), the applicant Government submitted that neither the condition of a State nor that of an autonomous administration was satisfied in the present case. Consequently, "no question of co-operation arises but an extension of State authority on the part of Turkey through its State services over the northern part of Cyprus".

The applicant Government denied that there was ever an agreement "between the so called 'President of the Turkish Federated State of Cyprus' and the U.N. Secretary General's Special Representative in Cyprus as alleged by the Turkish Government" (2) or that "matters concerning the stationing, deployment and functions of the U.N. peacekeeping force in Cyprus are discussed directly with responsible officials of the 'Turkish Federated State of Cyprus'".

With regard to the intercommunal negotiations, invoked by the respondent Government (3), the applicant Government contended "that these negotiations (which have not been resumed ever since 1977 due to the negative attitude of the Turkish side) are not in any way incompatible with the responsibility of Turkey for the violations complained of". They "were taking place between the representatives of the two communities in Cyprus (not between the representatives of the Cyprus Government and the representatives of the so called Turkish Federated State of Cyprus) on the basis of the relevant U.N. Resolutions according to which the General Assembly:

---

(1) P. 105 above.

(2) P. 103 above.

(3) P. 106 above.

> 'Considers that the constitutional system of the Republic of Cyprus concerns the Greek Cypriot and the Turkish Cypriot communities;
>
> commends the contacts and negotiations taking place on an equal basis with the good offices of the Secretary General between the representatives of the two communities, and calls for their continuation with a view to reaching freely a mutually acceptable political settlement, based on their fundamental and legitimate rights; ......' (Res. 3212 (XXIX) endorsed by the Security Council's Res. 365 (1974); 3395 (XXX) etc)."

In the applicant Government's view, these negotiations between the two communities for a political settlement regarding the constitutional restructure of the state of the Republic of Cyprus "do not in any way affect the responsibility of Turkey for the violations complained of. The violations in question were not and could not be the subject of intercommunal negotiations". "Turkey continues to bear full responsibility for these violations."

The applicant Government stressed "that there never was any waiver .... of the rights under the Convention that are being violated by Turkey in Cyprus" and "that the question now in issue before the Commission is whether Turkey's responsibility under Art. 1 of the Convention is engaged because of any control exercised by Turkey through its troops over the northern part of Cyprus resulting to the violations complained of .... (S)o long as that responsibility is established any negotiations for the settlement of the Cyprus political problem should not affect the present proceedings; especially in view of the fact that the violations in question are still continuing .... (N)o political issue should be allowed to block the way or delay any action for the protection of human rights. To accept the contrary would render the very notion of human rights entirely meaningless; for serious violations of human rights are as a rule the result of political controversies. If then, it is accepted that no remedy is possible pending the solution of such controversies this would amount to condoning continuous violations of human rights - on any scale - ad infinitum at times when these rights are in special need of protection."

With regard to the issue of missing persons, the applicant Government submitted that any efforts to trace them "do not relate to the question of responsibility for the fate of those missing. They are simply confined to establishing the fate of each one of the missing persons irrespective of the causes of the problem. This was the position all along and it was expressly reasserted in the terms of reference of the joint committee proposed to be formed with the help of the U.N. Special Representative in Cyprus, but whose establishment is delayed because of the lack of co-operation on the part of the Turkish side."

According to the applicant Government, no account has yet been given by the Turkish side regarding the fate of the missing Greek Cypriots. "The efforts of the Secretary General referred to in the Turkish observations have, as pointed out above, failed until now to produce any positive result because of the Turkish negative attitude." "The statement of the U.N. Secretary General quoted in the Turkish observations (1) does not in any way exonerate Turkey from responsibility regarding the fate of the Greek Cypriot missing persons."

The applicant Government relied in this respect on the finding in the Commission's Report on Applications Nos. 6780/74 and 6950/75 (pp. 17-18). They argued that "Turkey's responsibility on this subject is of course of a continuing nature. The relevant Resolution of the U.N. General Assembly is indicative of the lack of progress in respect of this humanitarian issue due to the negative attitude of the Turkish side."

The applicant Government stressed that there never was any agreement that the Greek Cypriot refugees would not return to their homes and properties in the northern part of Cyprus or that the Turkish Cypriots living in the north should not return to their homes in the south. At the third round of Vienna talks in 1975 the representatives of the Turkish Cypriot and Greek Cypriot communities had agreed as follows:

> "1. The Turkish Cypriots at present in the South of the Island will be allowed, if they want to do so, to proceed North with their belongings under an organised programme and with the assistance of UNFICYP.
>
> 2. Mr. Denktash reaffirmed, and it was agreed, that the Greek Cypriots at present in the North of the Island are free to stay and that they will be given every help to lead a normal life, including facilities for education and for the practice of their religion, as well as medical care by their own doctors and freedom of movement in the North.
>
> 3. The Greek Cypriots at present in the North who, at their own request and without having been subjected to any kind of pressure, wish to move to the South, will be permitted to do so.
>
> 4. UNFICYP will have free and normal access to Greek Cypriot villages and habitations in the North.
>
> 5. In connection with the implementation of the above agreement priority will be given to the re-unification of families, which may also involve the transfer of a number of Greek Cypriots, at present in the South, to the North."

---

(1) P. 106 above.

It was clear from the terms of this agreement that it did not in any way amount to an "exchange of population" and not in any way affect the rights of the Greek Cypriot refugees as implied by the respondent Government. "This has been expressly verified on 5 April 1977 (during the last round of the intercommunal talks) by the U.N. Secretary General's Special Representative Mr. Guellar when challenged to do so, in the presence of the Turkish Cypriot interlocutor, by the Greek Cypriot interlocutor, Mr. Papadopoulos."

Moreover, the agreement was not kept by the Turkish side. "This further illustrates the inability of the Turkish Cypriot community to exercise any authority in the northern part of Cyprus contrary to the declared policy of the Turkish Government. About 8,000 Greek Cypriots were since the said agreement forced to leave their homes and seek refuge in the Government controlled areas in the south." (1)

The applicant Government's position had always been that all refugees should return to their homes as provided by the U.N. Resolutions but "Turkey still prevents the refugees from returning to their homes .... this being the consistent policy of Turkey on this issue".

The applicant Government denied that there had ever been a statement by them or the Greek Cypriot community to the effect that there could be no question of more than 10 per cent of the displaced population returning to the north, as alleged by the respondent Government (2).

"The right of the Greek Cypriot refugees to their homes and properties in the north" had never been waived. "The text of the four guidelines agreed between the Greek Cypriot community and Turkish Cypriot community set out in the Report of the U.N. Secretary General dated 30 April 1977 (S/12323) "does not in any way implie such waiver and does not in any way exonerate Turkey from responsibility for the continuing violations of such rights". The guidelines "refer to the constitutional restructure of the State of the Republic of Cyprus which in any case, according to the Greek Cypriot community and the Cyprus Government, should safeguard the human rights of all citizens of the Republic".

The only subject for discussion in respect of the right of property, freedom of movement and freedom of settlement, referred to in the guidelines, was the solution of any practical difficulty that might arise for the Turkish Cypriot community from their implementation within the framework of any future constitutional solution of the Cyprus problem. The position of the Greek Cypriot community in this respect had been made clear during the last intercommunal negotiations in Vienna (31 to 7 April 1977).

---

(1) Cf. p. 88 above.

(2) P. 107 above.

According to the "principles subject to which the proposals of the Greek Cypriot side for the solution of the Cyprus problem were made" (Annex C to the U.N. Secretary General's Report of 30 April 1977 S/12323):

> "For every citizen of the Republic -
>
> (a) There shall be a right of free movement throughout the territory of the Republic and freedom of residence in any place in which he may choose to reside;
>
> (b) his life, security and liberty shall be safeguarded and his private and family life shall be respected and his home shall be inviolable;
>
> (c) his right to property shall be respected and safeguarded;
>
> (d) his right to work, practise his profession or carry on his business in any place he chooses shall be assured".

Also during the last intercommunal talks the Greek-Cypriot interlocutor had made it clear that "the right of property would not be equated to compensation which amounted to arbitrary confiscation or to compulsory expropriation. Like freedom of settlement, the right of property was a fundamental human right safeguarded by the Conventions and Convenants on Human Rights to which Cyprus has acceded and cannot be alienated".

The Greek Cypriot community had been stressing throughout the intercommunal talks that any political solution of the Cyprus problem "should be in accordance with the U.N. Resolutions (which provide for the return of the refugees to their homes) and the obligations of the Cyprus Republic under the international Conventions on Human Rights".

The applicant Government affirmed that the rights of ownership and possession of the Turkish Cypriots "are fully respected ..... in the Government controlled area". All Turkish Cypriots "who moved to the occupied area have always been allowed by the Cyprus Government to return to their properties in the Government controlled area all possible guarantees being offered to them for that purpose. This was repeatedly expressly stated both by the President of the Republic and the Greek Cypriot interlocutor in the intercommunal talks. Yet the Greek Cypriot refugees are not allowed by the Turkish military authorities to return to their properties in the south which are usurped and exploited either directly by the Turkish troops or through the instrumentality of the Turkish Cypriots".

/...

The Committee of Ministers' decision of 21 October 1977 concerning Applications Nos. 6780/74 and 6950/75 (1) did not imply that "jurisdiction over the territory in question belongs fully and exclusively to the Turkish Federated State of Cyprus", as alleged by the respondent Government (2). On the contrary the decision "(though not exhausting all the possibilities of Art. 32 of the Convention and being of an interim nature) confirms the responsibility of Turkey under Art. 1 of the Convention for violations of human rights in the northern part of Cyprus - as per the aforesaid applications - similar to those complained of in the present application". This became clear from the following part of the decision:

> "The Committee of Ministers has examined applications Nos. 6780/74 and 6950/75 filed by the Republic of Cyprus after the events of 1974. It has likewise taken into consideration the Commission's report as well as the memorial of the Republic of Turkey on the question of Human Rights in Cyprus.
>
> The Committee finds that certain events which occurred in Cyprus constitute violations of the European Convention for the Protection of Human Rights. Consequently it asks that measures be taken in order to put an end to such violations as might continue to occur and so that such events are not repeated."

The applicant Government stressed that "no question of any responsibility on the part of the 'Turkish Federated State of Cyprus' was ever raised in the proceedings culminating to the said decision. In fact no such issue could be raised under the Convention. The respondent party in the said proceedings, against which the complaints for violations of human rights were directed ..... was exclusively the Turkish Government". Moreover, no question of continuing violations arose in the said proceedings "other than that relating to the continuing violations of human rights by Turkey in Cyprus". "It is therefore obvious that the Committee of Ministers were, in their aforesaid decision, referring to the relevant violations of the Convention by Turkey in Cyprus of which the applicant Government was complaining."

The applicant Government concluded "that the Commission has jurisdiction ratione loci to declare admissible .. . the present application".

---

(1) P. 108 (footnote 1) above.

(2) P. 107 above.

With regard to the respondent Government's submission that the application should be declared inadmissible as being "substantially the same as Applications Nos. 6780/74 and 6950/75 already brought before the Commission" the applicant Government argued that:

- para (1) of the Convention is not applicable to inter-state applications but expressly limited to individual applications under Art. 25 of the Convention. The Government quoted the Commission's decision on the admissibility of Applications Nos. 299/57 - Greece v. the United Kingdom (Yearbook 2 p. 190) and 788/60 - Austria v. Italy (Yearbook 4, p. 180-182) and Fawcett ("The Application of the European Convention on Human Rights" p. 310);

- in any case the violations complained of in the present application were not substantially the same as those covered by Applications Nos. 6780/74 and 6950/75. They "were committed at a different time than those covered by the aforesaid two applications and the relevant Report of the Commission adopted in respect thereof" and related "to a period of time after the Commission concluded the examination of evidence in respect of the said applications ie after 18 May 1976; and therefore they could not have been in any way the subject matter of the said Report". Every act or omission which amounted to a violation of any human right of any person at a particular time, if repeated or continued at a different time, "constitutes, as a matter of law and fact, another distinct violation of the relevant human right under the Convention even though the victim remains the same". The cases quoted by the respondent Government "relate either to complaints against acts or omissions identical in all respects, including the time that they have taken place, with acts and omissions which had already been dealt with by the Commission (cases Nos. 499/59, 1611/62, 509/59) or to applications declared inadmissible on the basis of para. 2 of Art. 27 of the Convention (cases Nos. 1307/61 and 3479/68)"; and

- "many of the violations complained of relate to new victims and the application in any case contains new relevant information".

The applicant Government, relying on Application No. 20/56 (Yearbook 1, p. 191) and Fawcett (op. cit p. 311), also submitted that, according to its case law, the Commission should not be too strict in deciding whether an application "is substantially the same as a matter which has already been examined by the Commission".

/...

With regard to the question of exhaustion of domestic remedies, the applicant Government underlined the reference, in Art. 26 of the Convention, to the "generally recognised rules of international law". They submitted that, in accordance with "the recognised relevant rules of international law it is the duty of the Government claiming that domestic remedies have not been exhausted to demonstrate the existence of such remedies." The Government again quoted the Commission's decisions on the admissibility of Applications Nos 299/57 and 788/60 and further relied on the Commission's finding "in rejecting a similar objection raised by Turkey in relation to the admissibility of Applications Nos 6780/74 and 6950/75" (loc. cit. p. 137). They submitted that the respondent Government had "failed to indicate sufficiently the remedy or remedies which could be exercised by the victims of the violations of human rights complained of .... in the circumstances that such violations have been committed" and failed "to show any grounds for considering that any domestic remedies indicated would be effective or sufficient, under such circumstances."

Considering the nature and extent of the violations complained of, the applicant Government, again quoting the admissibility decision in Applications Nos 6780/74 and 6950/75 (loc. cit. pp. 137 - 138), submitted that the judicial authorities of the Republic of Turkey "could not reasonably offer a possibility of redressing the alleged injury or damage to the victims." The relevant facts and circumstances on which the Commission relied in rejecting Turkey's similar objection in those applications remained substantially the same with regard to the violations complained of in the present proceedings and the same considerations applied in relation to the issue now under consideration.

The applicant Government contended that the "large scale violations of human rights by the Turkish authorities in Cyprus, as per .... the present application, relate to a continuing military action and exercise of authority by a foreign power. Such action and exercise of authority constitute a continuation of the military operation by the Turkish invading troops in July 1974 and are taking place in furtherance of the same declared policy of Turkey i.e. to turn the northern part of Cyprus into a Turkish populated area; such policy, being still supported as it seems by all political parties in Turkey. The violations complained of .... affect thousands of Greek Cypriots and they have continued to be committed on an organised basis and because of the ethnic origin and religion of the victims."

In the applicant Government's view, it would be "absolutely groundless to expect the Greek Cypriot victims to seek redress for their grievance to the very country which has initiated, supported and implemented the policy resulting in the continuing violations complained of, with any reasonable chance to succeed." It could not, for example, be expected "that there would be a real possibility of the Greek Cypriot refugees succeeding in getting a decision of a Turkish court against the seizure and appropriation of their land and properties by the Turkish state organs or agents in the northern part of Cyprus and have that decision executed, viewing, inter alia, the Turkish persistent government policy of preventing the said refugees until now from returning to their houses in spite of the relevant Resolutions of the United Nations."

The applicant Government also "recalled that the Turkish occupied areas of Cyprus, in which the violations complained of were committed, are sealed off and the Turkish military authorities do not allow free access to them even to the UN forces." They further observed that:

- "the judicial remedy referred to by the Turkish Government could not be sought for fear of repercussions";
- in the circumstances "under which the violations complained of were committed, no information as to the identity of the persons responsible for them could be obtained apart from the fact that they were members of the Turkish army or were acting under the authority thereof. It was, therefore, impossible in practice to exercise any judicial remedy (see the decision of the Commission in Application No 299/57 ....)";
- no "Turkish courts exist in the Turkish occupied areas where the violations of human rights complained of took place";
- the "so-called judicial system set up by the 'Turkish Federated State of Cyprus' .... does not form part of the legal system of Turkey against which the complaints of the applicant Government are directed; they are illegally functioning and in any case they have no effective authority or any authority over those acts of the Turkish Government, its armed forces or other organs, agents or persons acting in the exercise of authority and power given to them by Turkey, which amount to the violations complained of. In fact the so-called courts of the 'Turkish Federated State of Cyprus' are themselves subject to the overall authority of the Turkish Government and its troops as already explained .... Therefore, such 'courts' cannot in the circumstances offer any legal or effective 'domestic remedy' as envisaged by Art. 26 of the Convention."

/...

The applicant Government concluded "that the application cannot be rejected for non-exhaustion of domestic remedies in accordance with Arts. 26 and 27 (3) of the Convention."

With regard to the six months rule (Art. 26 of the Convention), the applicant Government submitted that this rule had "no application where the applicant complains, as in the present case, of a continuing situation against which no domestic remedy is available. This is well established by the decision of the Commission in the De Becker Case (.... see also Fawcett, op. cit. p. 308 and Jacobs, European Convention on Human Rights p. 243)." According to the said decision, Art. 26 called for a restrictive interpretation.

The applicant Government submitted "that the violations complained of (in) the present application amount to a constant or continuing state of affairs against which no domestic remedy is available, as was in substance and effect the case envisaged by the aforesaid decision of the Commission and therefore the six months rule invoked by the Turkish Government has no application in respect of the present proceedings. The fact that the commencement of the military operation on the part of the Turkish Government, whose continuation (in the form of military occupation of the northern part of Cyprus as explained in the particulars) accounts for the continuing violations complained of, dates back to July 1974, cannot be allowed to stand in the way of the consideration by the Commission of the continuing state of affairs of which the applicant Government complains, 'in so far as this state of affairs is not a thing of the past but still continues without any domestic remedy being available' (cf. De Becker case ....)".

"In any case, in so far as the Commission may find that the application relates in any extent to any particular act or acts occurring at a given point in time and not being part and parcel of a continuing state of affairs, it is submitted that such act or acts have, for the purposes of Art. 26, occurred during the period of six months prior to the lodging of the application."

The applicant Government concluded "that the application cannot be declared inadmissible as being out of time."

The applicant Government contested that the application was abusive. They referred to the Commission's decision admitting Applications Nos 6780/74 and 6950/75, "which related to similar violations of human rights by Turkey as those covered by the present application and which the Commission in its Report, that was adopted on 10 July 1976, found to have been established. In fact the findings of the Commission, as per the Report in question, in respect of similar complaints against the respondent Government, prove beyond any doubt that the complaints in the present application are not 'accusations of a political nature aiming to further a propaganda campaign in the guise of protecting human rights', as alleged by the Turkish Government, but well substantiated complaints for extensive violations of the Convention by the respondent Government, of an unprecedented nature, which continue to be committed on the same pattern in utter disregard of the legal obligations of Turkey under the Convention." The real concern of the applicant Government for bringing these proceedings was, therefore, the continuing violations of human rights by the respondent Government "and the ensuing human pain and suffering of the thousands of victims."

The applicant Government complained that, "in spite of the Report of the Commission by which the responsibility of the respondent Government in respect of similar violations has been established and in spite of the relevant UN Resolutions, Turkey continued to commit on a systematic basis the violations which are the subject matter of the present application. No move was made on the part of Turkey for the restoration of human rights in Cyprus. In the circumstances the applicant Government had no other choice but to bring to the knowledge of the Commission, in accordance with the Convention, this unacceptable continuing state of affairs which amount to a flagrant violation of the public order of Europe." The subject of the intercommunal talks was "not the violations of human rights by Turkey in Cyprus, but the constitutional restructure of the Cyprus State. Turkey cannot escape responsibility by invoking such negotiations."

The applicant Government stated that they did not have any responsibility "for the leakage to the press of the Commission's secret Report of 10 July 1976."

With regard to Annex I to the respondent Government's submsisions, the applicant Government considered that "the statements of Mr Denktash, which are sought to be introduced in these proceedings by the Turkish Government, support the view that it is the respondent Government who is abusing for political ends the procedure before the Commission." Through the introduction of the said statements in the present proceedings, the respondent Government were "trying to politicize the issue by putting forward the unfounded proposition that the violations complained of constitute nothing else than a difference between the two communities in Cyprus, and that the solution of any problem arising therefrom should be sought through intercommunal talks." But "the violations in question, far from constituting an intercommunal dispute", were "the direct result of the policy and organised action of the respondent Government directed against the

/...

Greek Cypriot community of the island." At the same time, as observed by the Commission in its decision admitting Applications Nos 6780/74 and 6950/75 (loc. cit. p. 137), Turkey's action "deeply and seriously affected the life of the population" as a whole.

The applicant Government resisted "the temptation of replying to the unfounded statements (most of them being self-evidently so) of Mr Denktash who purports to be speaking on behalf of the Turkish Cypriot community, itself a victim of the continuing state of affairs complained of and for which the entire responsibility rests with the Turkish Government." They would not allow themselves "to be drawn into an argument on what purport to be allegations on the part of the Turkish Cypriot community with regard to the complaints of the present application which are directed entirely against the Turkish Government. Otherwise the applicant Government would become an accomplice to the obvious attempt of the respondent Government to avoid, and politicize the issue of the violations of human rights by its military forces in Cyprus by shifting its responsibility to the so-called Turkish Federated State of Cyprus and converting the issue to a dispute between the two communities."

"Further and without prejudice to the above" the applicant Government submitted "that Annex I cannot be relied on for the purposes of the present proceedings, especially in the form in which it is presented, for the following reasons":

- the document in question was presented as containing "Observations by Mr R. Denktash, President of the Turkish Federated State of Cyprus". But "the 'State' in question has no legal standing both as a matter of municipal and international law. Therefore the obvious attempt to give it such standing through the examination of the said document, in the form and style in which it is presented, by an international institution such as the Commission should be rejected. In any case such 'State' and its 'President' have no locus standi in the present proceedings";

- the "'State' in question has no authority or jurisdiction of its own over the areas where the violations complained of have taken place. Therefore there can be no question of such 'State' being answerable or refuting responsibility for the said violations";

- the "aforesaid 'State' depending entirely for its existence and being under the authority of the Turkish Government, cannot be an objective source of information in relation to the matters in issue."

/...

The applicant Government also quoted a statement which, according to the Government, had been made on 28 January 1978 by the Chairman of the "Turkish Cypriot Teachers Tread Union", Mr Arif Tahsin, during an interview with the press organ of that union:

> "The Turkish Cypriot community does not elect its leaders. No matter how it looks and what the patent is, the leaders are always appointed by Ankara. The certificate of leadership always comes from Ankara. This means that those to be appointed to the leadership should share and represent the views of the government of the Turkish Republic."

- the document in question "being mainly an attempt to prejudice the merits of the application cannot be relied on so long as the respondent Government itself declined until now to enter into the merits of the case and confined itself to raise legal questions concerning the admissibility of the application";
- in so far as the document contained "counter allegations for violations of human rights of the Turkish Cypriots by the Cyprus Government in the past (which are in any case refuted by the applicant Government) it cannot under the Convention become the subject of examination in the present proceedings."

The applicant Government observed that the "question of alleged violations of human rights of the Turkish Cypriots by the Cyprus Government was touched by Turkey (in) Applications Nos 6780/74 and 6950/75. Turkey also tried on several occasions to use this question in political forums, but she never dared to bring it formally before the Commission for scrutiny and investigation, though challenged to do so." The Government resisted "again the temptation to deal with the unfounded allegations in question, in order to demonstrate .... Turkey's responsibility for the last twenty years for any friction between the Greek and Turkish communities in Cyprus in consequence of Turkey's policy to partition the island so as to suit her own political interests; and to demonstrate .... how the fiction of the so-called violations of human rights of the Turkish Cypriots was created and used by Turkey in furtherance of the said policy with the result that the people of Cyprus as a whole are now the real victims of gross violations of human rights by Turkey."

Referring to para. 38 of the Commission's Report on Applications Nos 6780/74 and 6950/75, the applicant Government submitted that the aforesaid question ,"having not been brought by Turkey through the proper procedure before the Council of Europe and being now raised by the 'President' of a non-existent 'State' as a political manoeuvre to distract attention from the only issue before the Commission, i.e. the violations of human rights by Turkey, should be completely disregarded as irrelevant and inadmissible." "To enter into an

/...

examination of such question, in the form in which it is being raised, would be completely incompatible with the Convention let alone the fact that counter allegations for violations of human rights cannot, either legally or morally, be considered as a justification for violations of human rights by any country, especially of such big scale and continuing nature as the ones complained of by the applicant Government."

It had already been open to Turkey "to raise any question of alleged violations of human rights of the Turkish Cypriots before the Commission through the proper procedure, in which case the Cyprus Government would have had much to say on the subject."

The applicant Government concluded that the present application concerned "a unique case of massive and organised violations of human rights in the European space which continue to take place before the eyes of the whole world" and they requested the Commission to declare the application admissible.

2. Oral submissions

The Parties' above observations on the admissibility of the application were further developed at the hearing before the Commission on 5 and 6 July 1978. Their oral submissions may be summarised as follows:

(a) Respondent Government

Contesting the locus standi of the applicant Government, the respondent Government relied on their non-recognition of the applicant Government as Government of the Republic of Cyprus.

While not denying that substantive obligations continued to exist under the European Convention on Human Rights as between Turkey and Cyprus, the respondent Government maintained that proceedings under this Convention required a direct relationship between the parties. For this reason a non-recognised Government could not, as in the present case, bring proceedings under Art. 24 against the non-recognising Government as the former could not extract from the latter any degree of inter-governmental contact which the performance of the Convention might require.

The respondent Government considered that, even where a recognised Government of a High Contracting Party contemplated proceedings against another High Contracting Party, the latter could avoid such proceedings by withdrawing recognition from the former. Admissibility might still be prevented if recognition were withdrawn after the application had been introduced. In any case, Turkey's non-recognition of the applicant Government (since 1963) antedated the present application by a considerable period.

In support of their view, the respondent Government observed that the European Court of Human Rights had in a recent judgment (Ireland v. United Kingdom, para. 239) spoken of "mutual bilateral" undertakings in the Convention. They maintained that international law did not require every party to a treaty to be equally bound; in particular, municipal courts of the Netherlands and the United States of America had refused to apply treaties with regard to territories controlled by non-recognised Governments.

The respondent Government did not exclude that Turkey's continuing substantive obligations under the European Convention on Human Rights vis-à-vis Cyprus could be made the subject of proceedings under Art. 24 against Turkey by a High Contracting Party other than Cyprus.

Invoking Turkey's rights as a guarantor of the Constitution of Cyprus under the Treaty of Guarantee of 1960, the respondent Government further submitted that the applicant Government's unconstitutional actions, in particular the present application, could not be opposed to Turkey. They pointed out that the Parliamentary Assembly of the Council of Europe had, since 1964, refused to accept a parliamentary delegation from Cyprus, which represented only the Greek Cypriot community and thus disregarded the bi-communal constitution of this State, on the ground that such acceptance would be incompatible with the Statute of the Council of Europe.

In support of their view the respondent Government also referred to the judgments of the International Court of Justice in the Norwegian Fisheries case and in the Fisheries Jurisdiction case (United Kingdom v. Iceland) and to the recent arbitral award between the United Kingdom and France concerning the Continental Shelf in the Channel area.

The respondent Government maintained their argument that the present application was inadmissible as being the same as Applications Nos. 6780/74 and 6950/75. While accepting that Art. 27 para. (1)(b) of the Convention covered only individual applications, they submitted that this provision reflected broader considerations of sound judicial conduct and argued that the Commission should avoid "needless repetition" and "theoretical or academic" activities.

In the respondent Government's view the present application was essentially identical with the two previous applications, in that:

- apart from Art. 2 of Protocol No. 1, it invoked the same provisions of the Convention;
- it advanced no new material; and
- it did not allege new breaches but only continuing violations of the Convention.

The respondent Government considered that the Commission was also precluded from dealing with the present application, filed on 6 September 1977, by the decision of the Committee of Ministers of the Council of Europe of 21 October 1977 concerning the two previous applications(1). The subject-matter of those applications and of the present one was the same, and that matter was settled to the extent that the Ministers' decision - which by its terms covered both past and future violations of the Convention in Cyprus - disposed of it. To the extent that the said decision did not dispose of it, the matter remained before the Ministers and was for that reason outside the Commission's jurisdiction.

In any case, in the circumstances the Convention did not, in the respondent Government's view, provide any remedy additional to the one which had "already been sought and achieved". The present application, if upheld, could only lead to the same result as the earlier applications. There was therefore no purpose in pursuing it, and the Commission should declare it inadmissible. In support of this argument the Government referred to the judgments of the International Court of Justice in the Northern Cameroons and the Nuclear tests cases and to the judgment of the European Court of Human Rights in the case of Ireland v. the United Kingdom (para. 154).

---

(1) Cf. p. 108 above.

Contesting the Commission's competence ratione loci, the respondent Government maintained their thesis that the alleged victims of violations of the Convention were at the material time not "within the jurisdiction" of Turkey, as required by Art. 1, but within the jurisdiction of the "Turkish Federated State of Cyprus". That entity exercised control over, and represented the Republic of Cuprus in, the northern part of the island on an interim basis, i.e. "until such time as the new constitution of a federal republic is established".

With regard to the Commission's interpretation, in its decision admitting Applications Nos. 6780/74 and 6950/75 (loc. cit. pp. 136-137), of the term "within their jurisdiction" in Art. 1 of the Convention, the respondent Government accepted that this expression covered not only the metropolitan territory of the State concerned but also other areas under its control. But they contested "that the mere presence of Turkish forces in northern Cyprus" could be "loosely presented as the basis for attributing responsibility for any and all acts which are alleged to constitute breaches of the Convention" in that area.

With regard to the "de facto character of the administration of the Turkish Federated State of Cyprus", the respondent Government again quoted Lord Denning's statement in the Hesperides case(1):

> "There was now an effective administration in north Cyprus which had made laws governing the day-to-day lives of the people. According to those laws the people who had occupied the hotels in Kyrenia were not trespassers. They were not asserting their ownership. They were occupying them by virtue of a lease granted to them under the existing laws or of requisitions made by the existing administration."

The Government further observed that, "in respect of compensation for losses occurring in northern Cyprus the British Government addresses itself ... to the authorities de facto of the Turkish Cypriot community".

The respondent Government described "the emergence of the Turkish Federated State in its present form" since 1963. After the Commission's decision of 26 May 1975 admitting the previous applications, the "Constitution of the Turkish Federated State"(2) had been promulgated, following a referendum, and there had been "three years of quiet and full civilian administration by the Government of the Turkish Federated State."

---

(1) Cf. pp. 100 - 102 above.

(2) Cf. p. 101 above.

The respondent Government submitted the "Consolidated Laws and Statutes of the Turkish Federated State", pointing out that they also contained provisions concerning the security forces. Particular reference was made to:

- the "Abandoned Movable Property (Collection and Control) Law, 1975";
- the "Immovable Alien Property (Control and Administration) Law, 1975"; and
- the "Immovable Alien Property (Allocation and Utilisation) Law, 1975".

The respondent Government observed in this connection that the interferences with property rights complained of in the present application "occurred within the framework of the Turkish Cypriot legal system", under the responsibility of the "Turkish Federated State". Likewise, the settlement in northern Cyprus of persons from Turkey was "entirely in the control of the Turkish Cypriot authorities"; there was no agreement between Turkey and the"Turkish Federated State" on this question.

With regard to the above measures affecting property in northern Cyprus the respondent Government submitted that "parallel legislation" had been enacted "by the Greek Cypriot authority in the South". The applicant Government's complaint of comparable action in the North was therefore inadmissible. In any case, any loss of property would in the usual course of events be compensated.

In their description of "the judiciary in the Turkish Federated State" as "an effective structure of courts" the respondent Government affirmed that "the courts are open to, and deal with, cases brought by, or against, Greek Cypriots and also with cases involving offences committed against Greek Cypriots living in the North."

Describing "the executive branch of the Turkish Federated State" as a "full effective structure", active in "all normal fields", the respondent Government submitted that its authority "was so extensive and exclusive" that it left "no room for any interference by any outside authority".

With regard to the relations between the Turkish Federated State of Cyprus" and Turkey, the respondent Government denied the existence of a "Co-ordination Committee of the kind alleged" by the applicant Government. Naturally there was a "need for a certain amount of co-operation on account of the aid granted by Turkey" and "in a situation where there are so many troops in Cyprus". This did not mean, however, that there was any subordination. The Co-ordination Committee had no executive or legislative function; it was purely advisory.

The respondent Government stated that the "Turkish Federated State" had its own armed forces and police force.

It was true that Turkey continued to extend her services to the Turkish Federated State, but even the 1960 Constitution of the Republic of Cyprus envisaged the receiving of aid (also in the form of personnel) by the two communities from Greece and Turkey respectively. Art. 108 of that Constitution provided:

> "1. The Greek and the Turkish Communities shall have the right to receive subsidies from the Greek or the Turkish Government respectively for institutions of education, culture, athletics and charity belonging to the Greek or the Turkish Community respectively.
>
> 2. Also where either the Greek or the Turkish Community considers that it has not the necessary numbers of schoolmasters, professors or clergymen (...) for the functioning of its institutions, such Community shall have the right to obtain and employ such personnel to the extent strictly necessary to meet its needs as the Greek or the Turkish Government respectively may provide."

It was also true that departments of the Turkish Government had concluded a number of co-operation agreements with the "Turkish Federated State"; such agreements would, however, have been unnecessary had Turkey exercised over northern Cyprus such authority as alleged by the applicant Government. The presence of Turkish troops in Cyprus was regulated by the Treaty of Guarantee and the Treaty of Military Alliance of 1960.

In conclusion, the respondent Government conveyed to the Commission an invitation by the "President of the Turkish Federated State", Mr. Denktash, to visit northern Cyprus with a view to "taking notice of the administrative set-up and functions etc. of the Turkish Federated State of Cyprus".

The respondent Government maintained their argument that the application was also inadmissible for non-exhaustion of domestic remedies. They observed that there existed "within the legal system of the Turkish Federated State of Cyprus a complete system of judicial remedies for matters which involve breaches of obligations under the law of that State"; the European Convention on Human Rights formed part of that law. The applicant Government had failed to show that there had been any attempt to pursue such remedies, or "to move the Turkish military authorities to remedy the situation".

The respondent Government finally maintained the view that the application was inadmissible as being abusive. While recognising that there was no express direction in the Convention to the Commission to reject State applications which it deemed to be abusive, the respondent Government, referring to the Commission's decision admitting Application No. 214/56 (De Becker v. Belgium, Yearbook 2, pp. 214, 230), submitted that the Commission was so empowered by general principles of international law.

In the Government's view, the present application was abusive, in that:

- it contained certain substantial allegations which were not particularised;
- it gave rise to a duplication of procedures; and
- it formed part of a pattern of political propaganda.

The respondent Government arrived at the following conclusions:

"The application ... should be declared inadmissible in its entirety on one or all of the following grounds:

1. The application has been made by an administration which is not recognized by the Government of Turkey as the Government of the Party to the Convention in whose name the application is expressed. As the non-recognition by Turkey of this administration is both deliberate and continuing, the procedures for the enforcement of the Convention, which require direct contact between an applicant and a respondent State, cannot be implemented without imposing upon the respondent a course of conduct incompatible with its non-recognition of the applicant.

2. The applicant administration is not acting in accordance with the Constitution of the State in whose name it purports to act. Whatever may be the acceptability of such conduct to others, it is not 'opposable' to Turkey.

/...

The Greek Cypriot Administration purporting to represent the Republic of Cyprus is not entitled to invoke against Turkey the consequences of Greek-Cypriot breaches of the undertakings given in the Treaty of Guarantee of 1960.

3. The present application duplicates the applications of 1974 and 1975 in that it relates essentially to the alleged continuation of the same claimed breaches.

The 1974 and 1975 applications have been the subject of a decision by the Committee of Ministers which specifically covers the question of continuation of the alleged breaches. There is thus nothing further that the Commission can achieve in relation to the alleged breaches. The proceedings are moot and the Commission should exercise its inherent discretion to determine their inadmissibility.

4. The area in which the application claims that the alleged breaches occurred is under the sovereignty of the Turkish Federated State of Cyprus. It is not under the jurisdiction of Turkey and there is no evidence before the Commission to show that Turkish jurisdiction extends specifically to the acts involved in any claimed breach.

5. Alternatively to 4, local remedies have not been exhausted.

6. Note must be taken of the manner in which the Greek-Cypriot authorities have taken advantage of breaches of the rules relating to the confidentiality of proceedings in the Commission and the Committee of Ministers. It is evident, therefore, that the present application is likely to form part of a pattern of political propaganda directed against Turkey and, for that reason, should be seen as improperly motivated and as constituting an abuse of rights."

(b) Applicant Government

Affirming their locus standi, the applicant Government relied on their continued recognition, as Government of the Republic of Cyprus, both by the Council of Europe and by the Security Council and the General Assembly of the United Nations. They stated that the Cyprus Parliamentary Delegation to the Parliamentary Assembly of the Council of Europe "of its own free will chose to abstain from participating in the work" of the Assembly. As regards the applicant Government's recognition by Turkey, until "1973 and even somewhat later, there was contact; diplomatic relations have never been severed".

The applicant Government further observed that, in international practice - e.g. between the United States and the Peking Government of China -, "entities which do not recognise one another very frequently find it possible to deal with one another and have to deal with one another in matters which require quite delicate, though informal and fairly active co-operation". Participation in proceedings under the European Convention on Human Rights did not require nor entail recognition. If the respondent Government's position, requiring recognition, were to be adopted, the withdrawal of recognition of a government "could be used quite readily as a means of avoiding important obligations under multilateral treaties". This was unacceptable, in particular, where, as in the present case, the treaty primarily created obligations by the High Contracting Parties vis-à-vis the persons within their jurisdiction.

Reference was made to the case of Ireland v. the United Kingdom (para. 239 of the judgment) and to the Tinoco Concessions case.

The applicant Government denied that the present application was the same as the previous applications. They submitted that the present application concerned continued or repeated violations of the Convention. Art. 27 para. (1)(b) did not apply and, in any case, referred to matters dealt with by the Commission, not by the Committee of Ministers. Moreover, the present application contained "new relevant information".

With regard to the Committee of Ministers' decision of 21 October 1977 in the two previous applications, the applicant Government, while not accepting the respondent Government's interpretation of that decision, submitted that, in the exercise of their powers under Art. 32 of the Convention, the Ministers could not look "at any matters which were not dealt with by the Commission in its Report on the earlier applications". They also considered that the "fact that the Committee of Ministers may not have fully discharged their responsibilities under Art. 32 in relation to the earlier applications" could "hardly be put forward as a ground for urging the Commission not to discharge its responsibilities fully in relation to the present application".

The applicant Government submitted that the Northern Cameroon case, relied on by the respondent Government, could not be so applied as it concerned a situation which in relevant aspects was different from the present case.

The applicant Government maintained that the Commission was competent ratio loci to deal with the present application. They submitted that the question of "jurisdiction" in northern Cyprus, in the sense of effective control - i.e. "whether jurisdiction is exercised by a foreign power or by a puppet government" - was immaterial at the stage of admissibility. It was sufficient for the purpose of admissibility that the applicant Government had "made substantial allegations that the violations were the responsibility of the respondent Government".

In any case, it was mere commonsense to observe that Turkey's large, heavily armed, mobile, modern military force controlled the entire area of northern Cyprus. This "strong presumption of control and consequent responsibility" would only lose some of its force if it were proved "both that northern Cyprus constituted a State and that such State had concluded a status of forces agreement with Turkey".

The "Turkish Federated State of Cyprus" had not so far been recognised by anyone as a State in the sense of international law, nor did it even claim to be such a State. Lord Denning's observations in the Hesperides case(1) concerned a matter of private international law; insofar as they might nevertheless have been relevant for the present application, they could no longer be invoked as the Court of Appeal's judgment had been set aside, and replaced by, a decision of the House of Lords on 6 July 1978.

The applicant Government maintained that Art. 26 of the Convention had been complied with. The respondent Government had failed to show any domestic remedies, which could have been exhausted effectively, and the six months rule applied only within the context of such remedies.

The applicant Government finally denied that the application was abusive on any of the grounds invoked by the respondent Government. In their view the fact that a political element was present in a case was not a reason for treating the case as an abuse. Nor was it necessary for the applicant in proceedings under Art. 24 of the Convention "to give full particulars of the case for the allegations".

In conclusion the applicant Government requested the Commission to declare the application admissible.

---

(1) See pp. 100-102, 115 - 116 and 140 above.

THE LAW

1. The Commission has considered the respondent Government's objections to admissibility in the following order:

I. the objection concerning the locus standi of the applicant Government;

II. the objection concerning the Commission's competence ratione loci in relation to the jurisdiction of Turkey;

III. the objection that domestic remedies have not been exhausted and that the six months rule has not been observed;

IV. the objection that the present application is the same as Applications Nos. 6780/74 and 6950/75;

V. the objection that the Commission is precluded from dealing with the present application by the decision taken by the Committee of Ministers of the Council of Europe in Applications Nos. 6780/74 and 6950/75 on 21 October 1977;

VI. the objection that the application is abusive.

2. In its examination of the above issues the Commission has had regard to the Parties' written and oral submissions and to its decision on the admissibility of Applications Nos. 6780/74 and 6950/75 (Decisions and Reports 2, pp. 125-138).

I. As to the locus standi of the applicant Government

3. The present application has been introduced under Art. 24 of the European Convention on Human Rights which provides that any High Contracting Party may refer to the Commission any alleged breach of the Convention by another High Contracting Party.

4. The Commission notes that both Cyprus and Turkey are High Contracting Parties to the Convention. It further observes that the continued existence of Cyprus as a State and Party to the Convention is not disputed by Turkey and refers to its decision on the admissibility of the previous applications (loc. cit. p. 135).

5. It follows that the application cannot be rejected on the ground that it has not been brought in the name of Cyprus as a "High Contracting Party" within the meaning of Art. 24.

6. The respondent Government submit, however, that the applicant Government are not the Government of Cyprus but only the leaders of the Greek Cypriot Community who in 1963 have taken the administration of the State into their hands in violation of the London and Zurich Agreements of 1959, the Treaty of Guarantee of 1960, and the Constitution of Cyprus which is part of those agreements; under international law the applicant Government are therefore not entitled to represent the Republic of Cyprus.

7. The Commission in dealing with this objection must follow the international practice, particularly of the Council of Europe, as regards the status of such a Government.

8. The Commission observes then that the applicant Government have been, and continue to be, recognised internationally as the Government of the Republic of Cyprus and that their representation and acts are accepted accordingly in a number of contexts of diplomatic and treaty relations and of the working of international organisations. In this respect the Commission refers to the practice mentioned in its previous decision (ibid.) and to more recent international practice both in the Council of Europe and in the United Nations.

9. Nevertheless, the respondent Government also maintain that they do not themselves recognise the applicant Government as the Government of the Republic of Cyprus, and that consequently, even if the applicant Government are deemed competent to bring the application, this is not opposable to Turkey under Art. 24.

10. The Commission does not find it necessary to consider the various effects in international law and practice, discussed at length in the Parties' submissions, of the non-recognition of one Government by another, since it is concerned only with the application of the Convention, which establishes a system of collective enforcement.

11. An application brought under Art. 24 does not of itself envisage any direct rights or obligations between the High Contracting Parties concerned. The European Court of Human Rights (Ireland v. United Kingdom, judgment of 18 January 1978, para. 239) distinguishes the various mutual undertakings, which are part of the network of relationships between members of the Council of Europe, from the special "objective obligations", accepted by members as High Contracting

Parties to the Convention, and subject to "collective enforcement", of which Art. 24 is the vehicle, and which serves the public order of Europe. These special obligations of a High Contracting Party are obligations towards persons within its jurisdiction, not to other High Contracting Parties.

12. Further, it cannot be said - as submitted by the respondent Government - that Art. 28 of the Convention requires or necessitates direct contacts between the Governments concerned, so that, in the event that Art. 28 comes into play, non-recognition by one Government of the other must render the application inadmissible from the outset. In particular, Art. 28 para. (a) requires the Commission to investigate the facts "with the representatives of the parties" and this process must, according to the French text, be "contradictoire". This qualification, not in fact expressed in the English text, requires no more than that the investigation must be fair and balanced between the parties to the case, giving them full opportunity to present, and to comment on, facts and evidence. The extent of participation by the parties concerned may, in the first place, be for them to determine, but it cannot control the investigation. On the other hand, Art. 28 para. (b) does not require direct contacts or relations between the parties; on the contrary, settlement is as a rule secured through and, in any case, with the consent of the Commission.

13. The Commission considers further that to accept that a Government may avoid "collective enforcement" of the Convention under Art. 24, by asserting that they do not recognise the Government of the applicant State, would defeat the purpose of the Convention.

14. The Commission therefore concludes that the applicant Government, as constituted at and since the time of lodging the present application, are to be considered as representing the Republic of Cyprus also for the purpose of proceedings under Art. 24, and any subsequent proceedings under Art. 28, of the Convention.

15. The respondent Government further contend that the applicant Government acted unconstitutionally in bringing the present application.

16. In this respect the Commission again refers to its decision in the previous applications where, "even assuming that an inconsistency with the Constitution of Cyprus of 1960 ... could be relevant for the validity of the applications", it found "that regard must be had not only to the text of this Constitution but also to the practice under it, especially since 1963". The Commission then noted that "a number of international legal acts and instruments, which were drafted in the course of the above practice and presented on behalf of the Republic of Cyprus, have, as stated above, been recognised in diplomatic and

/...

treaty relations, both by Governments of other States and by organs of international organisations including the Council of Europe." The Commission also considered "that regard must be had to the purpose of Art. 24 of the present Convention and that the protection of the rights and freedoms of the people of Cyprus under the Convention should consequently not be impaired by any constitutional defect of its Government" (loc. cit. p. 136).

17. The Commission therefore concludes, as in the previous case, that the application has been validly introduced on behalf of the Republic of Cyprus.

II. As to the Commission's competence ratione loci in relation to the jurisdiction of Turkey

18. The respondent Government further contend that the Commission has no jurisdiction ratione loci to examine the application which relates to alleged violations of the Convention in the island of Cyprus. They first submitted that, under Art. 1 of the Convention, the Commission's competence ratione loci is limited to the examination of the acts alleged to have been committed in the national territory of the High Contracting Party concerned. At the hearing the Government accepted that Art. 1 might also cover areas outside the national territory provided that such areas were under the effective control of the Government concerned,but they contended that Turkey had no such control over the north of Cyprus which was under the exclusive jurisdiction of the "Turkish Federated State."

19. The Commission recalls that, in Art. 1 of the Convention, the High Contracting Parties undertake to secure the rights and freedoms defined in Section 1 to everyone "within their jurisdiction" (in the French text: "relevant de leur juridiction"). It follows from the Commission's decision in the previous case that this term is not equivalent to or limited to "within the national territory" of the High Contracting Party concerned. It emerges from the language, in particular of the French text, and the object of this Article, and from the purpose of the Convention as a whole, that the High Contracting Parties are bound to secure the said rights and freedoms to all persons under their actual authority and responsibility, not only when that authority is exercised within their own territory but also when it is exercised abroad. The Commission refers in this respect to its decisions in the previous case (loc cit. pp. 136 - 137), in Application No. 6231/73 (Ilse Hess v. United Kingdom, Decisions and Reports 2, pp. 72, 73) and in Applications Nos. 7229/75 and 7349/76 (X. and Y. v. Switzerland, Decisions and Reports 9, pp. 57-76).

/...

20. As stated by the Commission in Application Nos. 6780/74 and 6950/75, the authorised agents of the State, including diplomatic or consular agents and armed forces, not only remain under its jurisdiction when abroad but bring any other persons or property "within the jurisdiction" of that State, to the extent that they exercise authority over such persons or property. In so far as, by their acts or omissions, they affect such persons or property, the responsibility of the State is engaged (loc. cit. p. 136).

21. In examining in the previous case "whether Turkey's responsibility under the Convention is ... engaged because persons or property in Cyprus have in the course of her military action come under her actual authority and responsibility at the material times", the Commission noted that Turkish armed forces had "entered the island of Cyprus, operating solely under the direction of the Turkish Government and under established rules governing the structure and command of these armed forces including the establishment of military courts." The Commission found that these armed forces were "authorised agents of Turkey" and that they brought "any other persons or property in Cyprus 'within the jurisdiction' of Turkey, in the sense of Art. 1 of the Convention" to the extent that "they exercised control over such persons or property". The Commission then concluded that, insofar as those armed forces of Turkey, "by their acts or omissions, affect such persons' rights of freedoms under the Convention, the responsibility of Turkey is engaged" (loc. cit. p. 137).

22. The Commission, while maintaining this conclusion in the present case, wishes to add the following further observations with regard to the respondent Government's reference to the "Turkish Federated State of Cyprus".

23. It is not disputed between the Parties that the European Convention on Human Rights continues to apply to the whole of the territory of the Republic of Cyprus, and that the applicant Government have since 1974 been prevented from exercising their jurisdiction in the north of the island. This restriction on the actual exercise of jurisdiction by the applicant Government, as the Government of the Republic of Cyprus, is due to the presence of Turkish armed forces in the north of the island. The respondent Government submit that the presence of their armed forces in that area is justified both under the Treaty of Guarantee of 1960 and by the wish of the "Turkish Federated State of Cyprus", proclaimed in the north of the Republic in 1975.

24. The Commission is not called upon to pronounce on the validity of either of these alleged justifications under general international law. It is bound to observe, however, that one High Contracting Party, namely Cyprus, has since 1974 been prevented from exercising its jurisdiction in the northern part of its territory by the presence there of armed forces of another High Contracting Party, namely Turkey; that the recognition by Turkey of the Turkish Cypriot administration in that area as "Turkish Federated State of Cyprus" does not, according to the respondent Government's own submissions, affect the continuing existence of the Republic of Cyprus as a single State and High Contracting Party to the Convention; and that, consequently, the "Turkish Federated State of Cyprus" cannot be regarded as an entity which exercises "jurisdiction", within the meaning of Art. 1 of the Convention, over any part of Cyprus.

25. The Commission concludes that Turkey's jurisdiction in the north of the Republic of Cyprus, existing by reason of the presence of her armed forces there which prevents excercise of jurisdiction by the applicant Government, cannot be excluded on the ground that jurisdiction in that area is allegedly exercised by the "Turkish Federated State of Cyprus".

26. This conclusion does not prejudge the imputability to Turkey of any particular violation of the Convention which may be established in an examination of the merits of this application.

III. As to the exhaustion of domestic remedies and the observance of the six months rule

27. Under Art. 26 of the Convention the Commission may only deal with a case after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.

28. The Commission has in the previous case confirmed its case-law according to which the rule requiring the exhaustion of domestic remedies applies not only in individual applications lodged under Art. 25 but also in cases brought by States under Art. 24 of the Convention (loc. cit. p. 137). This rule means in principle that remedies, which are shown to exist within the legal system of the responsible State, must be used and exhausted in the normal way before the Commission is seized of a case; on the other hand

/...

remedies which do not offer a possibility of redressing the alleged injury or damage cannot be regarded as effective or sufficient and need not, therefore, be exhausted (Retimag case, as confirmed in Applications Nos. 6780/74 and 6950/75, loc. cit. p. 137).

29. The respondent Government submit that "the alleged victims of violations of the Convention have made no use either of the judicial authorities of the Republic of Turkey or of the judicial system set up by the Turkish Federated State of Cyprus, which comprises effective and adequate institutional guarantees". The Government refer in this respect to Arts. 102 to 124 of the "Constitution of the Turkish Federated State of Cyprus" and to Appendix I of their observations on admissibility.

30. With regard to the question whether the remedies indicated by the respondent Government can in the circumstances of the present case be considered as effective, the Commission first recalls that, in the previous case, the applicant Government's allegations of large-scale violations of human rights by Turkish authorities in Cyprus related to a military action by a foreign power and to the period immediately following it. That action had deeply and seriously affected the life of the population in Cyprus and, in particular, that of those Greek Cypriots who were living in the northern part of the Republic where the Turkish troops operated. This was especially shown by the very great number of refugees in the south of the island.

31. In those circumstances the Commission found that remedies which, according to the respondent Government, were available in domestic courts in Turkey or before Turkish military forces in Cyprus could only be considered as effective "domestic" remedies under Art. 26 of the Convention with regard to complaints by inhabitants of Cyprus if it were shown that such remedies were "both practicable and normally functioning in such cases". This was then not established by the respondent Government. In particular, as found by the Commission, the Government did not show "how Art. 114 of the Constitution of Turkey could extend to all the alleged complaints or how any proceedings could be effectively handled given the very large number of these complaints."

32. In conclusion, the Commission did then "not find that, in the particular situation prevailing in Cyprus since the beginning of the Turkish military action on 20 July 1974", the remedies indicated by the respondent Government could be "considered as effective and sufficient 'domestic remedies' within the meaning of Art. 26 of the Convention" (loc. cit. pp. 137-138).

/...

33. With regard to the complaints in the present application, and to the Parties' submissions concerning the question of domestic remedies in the situation at present prevailing in Cyprus, the Commission first observes that some of the complaints, in particular those concerning property rights, relate, according to the respondent Government, to the implementation of legislative acts of the "Turkish Federated State of Cyprus", and that, according to the Commission's case-law, the rule requiring the exhaustion of domestic remedies does not apply to complaints the object of which is to determine the compatibility with the Convention of legislative measures and administrative practices (Second Greek Case, final decision on admissibility, Collection of Decisions 34, pp. 70, 73 - Yearbook 13, pp. 122, 132, with further references; see also Application No. 5310/71 - Ireland v. United Kingdom, Collection of Decisions 41, pp. 3, 84), except where specific and effective remedies against legislation exist.

34. The Commission further considers that any remedies, which according to the respondent Government may be available in domestic courts in Turkey, cannot for the purposes of the present complaints, concerning the violation of human rights of Greek Cypriots in Cyprus, be considered as "both practicable and normally functioning".

35. The Commission has finally noted the respondent Government's reference, as regards "domestic remedies", to Annex I (entitled "Observations by Mr. R. R. Denktash, President of the Turkish Federated State of Cyprus") and Annex II (entitled "Constitution of the Turkish Federated State of Cyprus") to their written observations on admissibility. According to Annex I (p. 38, para. 73) "all offences committed against Greek Cypriots living in the north and their properties, which come to the knowledge of the Turkish Federated State of Cyprus, are investigated and referred to courts". Moreover, Annex XXXI to Annex I lists "examples of Greek Cypriot complaints which have been dealt with by courts of the Turkish Federated State of Cyprus".

36. With regard to these submissions the Commission observes the following: the overwhelming majority of Greek Cypriots, whose rights and freedoms under the Convention are alleged to have been violated, are at present resident in the southern part of Cyprus controlled by the applicant Government and are not permitted to enter the northern part of the Republic which, as stated above, has since 1974 been under the respondent Government's jurisdiction. In these circumstances, any remedies which might be said to be available to such Greek Cypriots in the northern area cannot on principle be considered as "practicable".

/...

37. The Commission has further noted, in particular as to the alleged violation of property rights of Greek Cypriots still resident in the north of the island, that, according to Annex XXXI to Annex I of the respondent Government's written observations, proceedings concerning property offences have in twelve cases been brought, since 1974, in "courts of the Turkish Federated State of Cyprus" by Greek Cypriot plaintiffs. In eleven of these cases the plaintiffs' names are given; in one case the plaintiff is described as "absentee owner". The schedule further indicates that penalties were imposed on the accused in most of these cases and that property was returned to the owner in two cases.

38. In none of these cases, however, does it appear that the proceedings concerned interferences with property rights as alleged in the present application - namely, interferences by a public authority or by private persons acting with the consent of such an authority, as described in the "Particulars of the Application"(1).

39. It follows that the remedies indicated by the respondent Government cannot, for the purposes of the present application, be considered as relevant and sufficient and that they need not, therefore, be exhausted.

40. The Commission concludes that the application cannot be rejected under Arts. 26 and 27 para. (3) of the Convention for non-exhaustion of domestic remedies.

41. The respondent Government also submit that the application is inadmissible for non-observance of the six-months rule laid down in Art. 26. In this connection they refer in particular to the complaints concerning "missing persons" who, according to the applicant Government, "were last seen alive in the occupied areas of Cyprus after the invasion and who were brought under the actual authority and responsibility of the Turkish army in the course of the aforesaid military action or during the military occupation of the north of Cyprus".

42. The applicant Government reply that the six-months rule is inapplicable in the present case for two reasons: firstly, because it presupposes that there are domestic remedies to be exhausted, and there are none in this case; secondly, because the present complaint, insofar as it may give rise to a time question, relates to a "continuing violation" within the meaning of the Commission's case-law (De Becker Case).

---

(1) See pp. 92 - 96 above.

43. The Commission cannot accept the first of these arguments. For, as stated in Application No. 7379/76 (X. v. United Kingdom, Decisions and Reports 8, pp. 211, 212-213), "where no domestic remedy is available, the act or decision complained of must itself normally be taken as the 'final decision' ('décision interne définitive') for the purposes of Art. 26. The six months rule laid down in Art. 26 was clearly intended to require an applicant to decide whether or not to refer his case to the Commission within a period of six months after his position had been finally determined on the domestic level. Where no question of a continuing violation of the Convention arises, this requirement is equally applicable whether the applicant's position is finally determined by the final decision taken in the course of exhaustion of a domestic remedy or, in the absence of any domestic remedy, by the act or decision which is itself alleged to be in violation of the Convention." It follows that the applicability of the six months rule cannot in the present case be excluded on the ground that there were no domestic remedies to be exhausted.

44. The Commission accepts, however, the applicant Government's second argument and in this respect confirms its own case-law according to which, where there is "a permanent state of affairs which is still continuing", the question of the six months rule "could only arise after the state of affairs has ceased to exist" (De Becker case, Yearbook 2, pp. 214, 244; First Greek case, second decision on admissibility, Collection of Decisions 26, pp. 80, 110 - Yearbook 11, pp. 730, 778).

45. The Commission observes in this respect that, in admissibility proceedings concerning State applications under Art. 24 of the Convention, it is not its task even to carry out a preliminary examination of the merits since the provisions of Art. 27 para. (2) - empowering it to declare inadmissible "any petition submitted under Art. 25" which it considers "incompatible with the provisions of the present Convention" or "manifestly ill-founded" - apply, according to their express terms, to individual applications under Art. 25 only (First Greek Case, first decision on admissibility, Collection of Decisions 25, pp. 92, 115 - Yearbook 11, pp. 690, 726, 728, with further reference).

It follows that the Commission cannot at this stage of the proceedings examine whether the applicant Government's complaints of "continuing violations" of the Convention are or are not well-founded and that the applicant Government's submission, that the six months rule is inapplicable because the application relates to such "continuing violations", must be accepted.

/...

46. The Commission concludes that the application cannot be rejected under Arts. 26 and 27 para. (3) of the Convention for non-observance of the six-months rule.

IV. As to the objection that the present application is the same as Applications Nos. 6780/74 and 6950/75

47. The respondent Government submit that the present application "deals with the same alleged acts and events as those already covered in Applications Nos. 6780/74 and 6950/75", which alleged "the detention or death of about 2,000 missing persons, the displacement of persons, the separation of families and various infringements of Greek Cypriots' property rights". According to the Government the same alleged acts and events were covered by the Commission's Report in the previous case.

48. The respondent Government in this respect rely on the "well-established general legal principle that no-one can be tried twice on the same charges" and on the Commission's case-law under Art. 27 para. (1)(b) of the Convention, which provides that the Commission shall not deal with any application filed "under Art. 25" which is "substantially the same as a matter which has already been examined by the Commission" and contains "no relevant new information". The Government accept that this provision covers only individual applications but submit that it reflects "broader considerations of sound judicial conduct".

49. The Commission, having regard to the clear terms of Art. 27 para. (1)(b), cannot find that it is authorised under the Convention to declare inadmissible an application filed under Art. 24 by a High Contracting Party on the ground that it is substantially the same as a previous inter-State application. For so doing would, in the Commission's view, imply an examination, though preliminary, of the merits of the application - an examination which, as already stated, must in inter-State cases be entirely reserved for the post-admissibility stage. In any event, the present application is not identical with the previous cases.

50. It follows that the present application cannot be declared inadmissible as being the same as the previous Applications Nos. 6780/74 and 6950/75.

/...

V. As to whether the Commission is precluded from dealing with the present application by the Committee of Ministers' decision of 21 October 1977

51. The respondent Government submit that the Commission is precluded from dealing with the present application by a decision of the Committee of Ministers of the Council of Europe of 21 October 1977 concerning the two previous applications. The full text of the said decision was submitted to the Commission by the applicant Government as a documentary part of their application after parts of it had been quoted by the respondent Government. The Committee of Ministers has, however, not communicated any such decision to the Commission, and the text presented to it by the Parties to the present case does not indicate any position taken by the Committee of Ministers as regards the present application, the introduction of which, having been announced by the Commission's press communiqué of 9 September 1977 - C (71) 31 - must be presumed to have been known to the Committee.

52. In any case, as the Commission has stated in its first decision on admissibility in the First Greek Case with reference to the Parliamentary Assembly of the Council of Europe, "in the exercise of its functions under Art. 19 of the Convention", it "is limited to a consideration of the substance of the case file before it and thus acts in complete independence" as regards any other body (Collection of Decisions 25, pp. 92, 114, Report Vol. I, Part 1, p. 15).

53. The Commission therefore finds no ground in the text of the decision presented on which it is precluded under the Convention from taking up the present application.

VI. As to whether the application is abusive

54. The respondent Government finally submit that the application constitutes an abuse of the procedure provided for by the Convention in that it is unparticularised,substantially the same as the earlier applications and contains accusations of a political nature in order to further a propaganda campaign.

55. The Commission has already confirmed in the previous case (loc. cit. p. 138) that the provision of Art. 27(2), requiring the Commission to declare inadmissible any application that it considers abusive,is in its terms confined to individual petitions under Art. 25 and therefore inapplicable to inter-State applications under Art. 24 of the Convention. It follows that the present application cannot be declared inadmissible under that provision.

/...

56. However, the Commission has also considered whether, as a matter of principle, an application under Art. 24, which, for example, used the Convention procedure for a purpose other than the protection of human rights and freedoms, or contained allegations which were in form or nature unacceptable, could still be declared inadmissible. Without offering any general answer to this question, the Commission does not find that the present application misuses the Convention procedure or is in any sense abusive.

57. It follows that the respondent Government's objection that the application is abusive can equally not be accepted by the Commission.

For these reasons the Commission,without prejuding the merits of the case,

DECLARES THE APPLICATION ADMISSIBLE

Secretary to the Commission	President of the Commission
(H. C. KRÜGER)	(J. E. S. FAWCETT)

ANNEX

to the Commission's decision on admissibility

Parties' representatives at the hearing before the Commission on 5, 6 and 7 July 1978

Applicant Government

Agent: Mr. L. G. LOUCAIDES

Advisers: MM. C. G. TORNARITIS
C. PILAVACHI
I. BROWNLIE
F. JACOBS

Respondent Government

Agent: Mr. I. UNAT

Advisers: MM. E. LAUTERPACHT
M. N. ERTEKÜN
N. BRATZA
R. ARIM
U.S. ONAN
H. PAZARCI
E. GÜVENDIREN
A. GÜVEN
O. E. AKBEL
